

1 THE STATE OF OHIO,)
2) SS: DEENA CALABRESE, J.
COUNTY OF CUYAHOGA.)

3 IN THE COURT OF COMMON PLEAS
4 (CRIMINAL DIVISION)

5 THE STATE OF OHIO,)
6)
Plaintiff,)
7 vs.) Case No. CR-563092
8)
MARTIN SARCYK, et al.,)
9)
Defendants.)

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11 TRANSCRIPT OF PROCEEDINGS

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13 Whereupon, the following proceedings were
14 had in Courtroom No. 22-B, The Justice Center,
15 Cleveland, Ohio, before the Honorable
DEENA CALABRESE, commencing on Monday,
December 10th, 2012, upon the indictment filed
heretofore.

16 - - - o0o - - -

17 APPEARANCES:

18 Timothy J. McGinty, County Prosecutor, by:
19 James D. May, Assistant County Prosecutor,

20 On behalf of the State of Ohio.

21 Berkman, Gordon, Murry & DeVan, by:
22 Mark R. DeVan, Esq.,
23 Steven D. Shafron, Esq.,

24 On behalf of Defendants Martin Sarcyk and
25 Union Vending.

1 Womble, Carlyle, Sandridge & Rice, by:
2 Mark E. Schamel, Esq.,
Cathy A. Hinger, Esq.,

3 On behalf of Defendants Phillip Cornick,
4 Richard Upchurch, VS2 Worldwide
Communications, LLC, and P&E
5 Technologies, Inc.

6 Gorman, Malarcik, Pierce and Vuillemin, by:
Donald J. Malarcik, Esq.,
7 Brian M. Pierce, Esq.,

8 On behalf of Defendants Christos
Kardsarides, Jr., Elite Entertainment DBA VS2
9 Marketing Group, CMKARE LLC, and CKARE Corp.

10 Law Office of Gregory S. Robey, by:
Gregory S. Robey, Esq.,

11 On behalf of Defendant Edward Kaba.

12 Law Office of Edward A. Heffernan, by:
13 Edward A. Heffernan, Esq.,

14 On behalf of Defendant Pete Georgekopoulos.

15 Law Office of David G. Phillips, by:
16 David G. Phillips, Esq.,

17 On behalf of Defendant George Georgekopoulos.

18 Pitinni & Koukoutas, by:
Frederick Pitinni, Esq.,

19 On behalf of Defendant Christopher Maggiore.

20 Synenberg & Associates, LLC, by:
21 Clare C. Christie, Esq.,

22 On behalf of Defendant Neil Sarcyk.

23
24
25 Angela R. Cudo, RPR
Official Court Reporter
Cuyahoga County, Ohio

1 MONDAY MORNING SESSION

2 DECEMBER 10, 2012

3 PROCEEDINGS

4 - - - o0o - - -

5 CALABRESE, DEENA, J.: Ladies and
6 gentlemen, we're going to get started on our
7 motion hearing at this point. I'm going to go
8 ahead and caption the cases. This is Case No.
9 563092, there are multiple defendants, multiple
10 corporations listed, so we'll say et al. at this
11 point. We'll begin with Phillip Cornick, Richard
12 Upchurch, VS2 Worldwide Communications, P&E
13 Technologies, Incorporated, et al. at this point.

14 Mr. Schamel and Mr. Malarcik are here as
15 it relates to a number of the different
16 corporations.

17 Cathy, I know I need to admit you at this
18 point. For the record, if you would so that
19 Angela -- she wants all the lawyers to introduce
20 themselves before they begin speaking.

21 MS. HINGER: Cathy Hinger on
22 behalf of Defendants VS2 Worldwide, P&E
23 Technologies, Rick Upchurch, and Phillip Cornick.

24 THE COURT: Your motion to be
25 admitted to practice in this courtroom is granted.

1 I know that you have gone through the Ohio Supreme
2 Court, and you have a Bar Number essentially, and
3 you have complied with all the procedures of the
4 Ohio Supreme Court. So I'm happy to have you
5 obviously. And we will continue through at this
6 point.

7 So with that being said, I'm also for
8 housekeeping sake going to grant everybody's
9 motions to join in everybody else's motions as
10 relates to the Motion to Suppress, et cetera, and
11 so those will be granted and so we can then
12 proceed at this point.

13 I have had several discussions with
14 lawyers as well as multiple pretrials as it
15 relates to this case, and there has been a
16 continued ongoing flow of discovery which has
17 begun several months ago when this case was
18 indicted. In addition to all of the lawyers
19 representing the corporations and the various
20 entities that are present here today, Mr. May is
21 here on behalf of the State of Ohio at his own
22 small table there. Mr. May. And we are at this
23 point getting ready to begin with Agent Boldin who
24 is also present on behalf of the State of Ohio
25 with the first portion of the Motion to Suppress

1 filed by Mr. DeVan on behalf of his clients.

2 And, Mr. DeVan, your clients specifically
3 are whom, for the record?

4 MR. DeVAN: We represent,
5 Mr. Shafron and I, represent Martin Sarcyk and
6 Union Vending.

7 THE COURT: Very good. So you
8 have what we'll determine or call first portion of
9 the Motion to Suppress. And, for the record, to
10 be clear, there have been multiple Motions to
11 Suppress filed. The lawyers, myself, the State of
12 Ohio have agreed that there's going to be a
13 procedure as it relates to how we will handle the
14 multiple layered issues that present themselves in
15 these Motions to Suppress.

16 There is a motion filed by Mr. DeVan on
17 behalf of his clients that relates to an initial
18 search, essentially a trash pull. So we are going
19 to take testimony as it relates to that particular
20 issue with Agent Boldin, then we are going to take
21 a break. After that break we will come back and
22 we will address the remaining issues.

23 Again, I've indicated to all of you, you
24 have as much time as you need, of course in
25 reason, and of course you're welcome to continue

1 to make any arguments and to make a complete
2 record as you see appropriate as the Court sees
3 appropriate as we continue through these hearings.

4 So let's make sure. I know there are of
5 course multiple lawyers, multiple clients, agents
6 on behalf of the State of Ohio, police officers,
7 agents on behalf of the FBI I think are back here
8 as well, so we'll continue through this process
9 until we basically work through all of the issues
10 that we're going to handle for this day and
11 perhaps through tomorrow. You know that I've
12 cleared my docket, so you have my time and my
13 attention.

14 And so with that being said, Mr. May, is
15 there anything outside of your Briefs which I have
16 read that you would like to add on behalf of the
17 State before you begin calling witnesses?

18 MR. MAY: Just to clarify the
19 State's position --

20 THE COURT: Yes.

21 MR. MAY: -- everyone is
22 joined in all of these motions?

23 THE COURT: Correct.

24 MR. MAY: All these motions
25 don't actually apply to everyone.

1 THE COURT: Correct.

2 Absolutely.

3 MR. MAY: So everyone has
4 been advised of the State's position; if you
5 engage in a hearing, it affects potential plea
6 negotiations.

7 THE COURT: I think that we had
8 -- we did have a discussion as it relates to the
9 State of Ohio's policy which was under Mr. Mason
10 and now continuing with Mr. McGinty, which is that
11 if you join in a Motion to Suppress Evidence and
12 you fully participate in the hearing that a plea
13 then is not available to you after such hearing
14 has been conducted.

15 So what you're saying is that some people
16 may participate and some people may not, and you
17 are aware of that because there are so many
18 people, in fact, here that will be participating;
19 is that correct?

20 MR. MAY: Your Honor, that's
21 correct. The State is aware of a number of
22 Defendants who have individually consulted with
23 the State regarding their personal situations as
24 it applies to this case.

25 The second point I raise, it's highly

1 unusual for everybody to join in a Motion to
2 Suppress. The Motion to Suppress usually regards
3 alleged illegal search and seizure, those are very
4 particular to the person and the place searched.

5 THE COURT: Absolutely.

6 MR. MAY: And so I would ask
7 the Court to keep that in mind when we're
8 addressing the situation, particularly this first
9 aspect because it in all truth really doesn't
10 affect anyone except Mr. Sarcyk and his company
11 Union Vending.

12 THE COURT: Correct.

13 Basically, certainly keep things distinct, we can
14 keep things linear. So we know when it comes to
15 Agent Boldin we are going to have questioning by
16 Mr. DeVan as it relates specifically to that
17 particular issue he raised in his Motion to
18 Suppress, and then we can move from there into the
19 VS2 and we'll say those more theoretical or
20 intellectual issues as it relates to search and
21 the intellectual property aspect that's been
22 raised by VS2 as it relates to the search of the
23 computers themselves or the terminals themselves
24 or the software itself.

25 Because I think certainly, Mr. Schamel,

1 you stated this most correctly, most of the time
2 when you're dealing with a Motion to Suppress you
3 are dealing with conduct that you were
4 questioning, and that in this particular case
5 we're sort of looking at it from the reverse
6 perspective. It's the conduct itself that is
7 questioned that we are unclear whether or not
8 there is -- it's legal or illegal, and that's what
9 the purpose of this hearing is to continue to
10 flesh out that one particular issue and how it
11 relates to the agent, the search, and the
12 suppression. Fair enough?

13 MR. SCHAMEL: Yes, Your Honor.

14 MR. MAY: If I may add one
15 thing. As the State pointed out in all its
16 responses including -- I'm not sure the State
17 included it in the response to Mr. Devan's Motion
18 to Suppress, but the ultimate issue is addressed
19 from every possible angle in these motions filed
20 on behalf of all of the Defendants.

21 THE COURT: Right.

22 MR. MAY: And so we're not
23 actually able to determine that. I think everyone
24 realized that. I think we have to dance around
25 the ultimate issue one way or another.

1 THE COURT: You speaking about
2 the Franks issues?

3 MR. MAY: No. Whether it's
4 gambling or not. Much of what is argued in these
5 motions is the State is wrong. That's an ultimate
6 issue. I'm making a record that there's
7 significant arguments that each one of these
8 well-crafted motions, for example on behalf of
9 VS2, that hearken back to the ultimate issue.
10 Likewise for Mr. DeVan's motion.

11 THE COURT: I completely agree
12 with you.

13 MR. MAY: Thank you, Your
14 Honor. Now that we've brought that out of the
15 way, by way of introduction, Your Honor, trash is
16 not private in the United States.

17 MR. SCHAMEL: Your Honor,
18 Mark Schamel, co-counsel.

19 For a housekeeping matter, do we have
20 anybody -- Could I invoke the rule anybody who's
21 not going to be an expert witness, not a party or
22 a lawyer who may be testifying be asked to step
23 out of the courtroom?

24 THE COURT: Absolutely. There
25 is a Motion to Separate Witnesses in the event you

1 have people that will be testifying in the course
2 of this hearing, and that's why I think at the
3 beginning I asked Mr. May who was testifying on
4 behalf of the State. It's my understanding just
5 Agent Boldin.

6 MR. MAY: That's correct.
7 We're talking about the search warrant, yeah.

8 THE COURT: Okay. So are we're
9 assuming the additional officers that are present
10 in the courtroom as it relates to the search issue
11 are not going to testify, correct?

12 MR. MAY: Correct, Your
13 Honor.

14 THE COURT: Okay. Then your
15 motion is granted. And so as it relates to the
16 search, clearly the officers that are here are
17 here for observational purposes only. Go ahead.

18 MR. MAY: Thank you, Your
19 Honor. It's a two-tiered issue before the Court.
20 It's not very complicated. It certainly was
21 interesting to look into because in law school
22 everyone learns that you don't have any privacy in
23 trash. However, where does that rule come from?
24 Well, it goes back to the concept of abandoned
25 property, Your Honor. And it's pretty simple in

1 Ohio, or at least in Cuyahoga County, because most
2 residents when they have trash they have to put it
3 out on something that's maybe in my opinion unique
4 to Ohio, the tree lawn. Something I had never
5 encountered before in Virginia or Vermont or
6 Massachusetts or anywhere else. So we have the
7 tree lawn, which is a place that you put stuff for
8 the trucks to come pick up, and you have to mow it
9 and you own it, but you don't.

10 But tree lawn aside, trash on the tree
11 lawn is accessible to everyone. It's accessible
12 once you put it out and walk away. There is no
13 privacy in that trash. Now, we go from abandoned
14 property, to trash being considered abandoned
15 property, to the right of anyone to be able to
16 look into that property, into that trash, and that
17 includes law enforcement. There is no exception
18 to law enforcement.

19 It becomes more nuanced when you start
20 talking about where the trash is located; however,
21 it is very clear in Ohio that trash in dumpsters
22 absent some pretty extreme or extraordinary
23 measures is also just like trash on the curb or
24 trash on the tree lawn.

25 So the first issue is is there an

1 expectation of privacy in trash. The simple
2 answer is no.

3 So the next inquiry is does the Defendant
4 have an expectation of privacy in his trash that
5 he puts in the dumpster that goes with his
6 business? We have Agent Boldin here to develop
7 the testimony, but really Agent Boldin is going to
8 introduce some exhibits for the Court to look at.

9 The fact is if the dumpster is in view of
10 the public, even if it's in a parking lot that's
11 not public, anyone may access that trash unless
12 the owner shall we say of the trash has taken
13 extraordinary measures to keep it private. Also,
14 keep in mind that the owner of the trash is often
15 -- more often than not not the owner of the
16 dumpster. So right out of the gate we have
17 someone claiming privacy in something that they
18 are putting into a box that's owned by someone
19 else, and that's why the Court in Ohio has very
20 carefully laid out the analysis regarding
21 dumpsters and measures to protect or preserve
22 rights of privacy of what's been put in it.

23 In this case, Your Honor, none of those
24 measures have been taken. Agents can drive into a
25 parking lot, law enforcement agents can drive into

1 a parking lot, law enforcement agents can even
2 trespass onto abandoned property in the State of
3 Ohio. In this case we have Agent Boldin engaged
4 in an investigation that is growing. He's
5 recovered some items and learned some information
6 that makes him question what is going on at the
7 business known as Union Vending, which is owned by
8 Mr. Martin Sarcyk, S-a-r-c-y-k.

9 Agent Boldin, like any good agent,
10 careful, cautious, goes and examines the premises
11 of Union Vending. And as he approaches Union
12 Vending he sees that they have a dumpster. Better
13 yet, he sees they have a dumpster that is right
14 out in the open that you can see from the street.
15 And so he makes a plan to go back to the dumpster
16 to see what it is that Union Vending is throwing
17 away because he has been trained there is no
18 privacy in trash, and it is a potentially
19 extraordinary opportunity for law enforcement to
20 find something out without really bothering
21 anyone.

22 And so Agent Boldin explores the dumpster
23 one night and recovers at least three pieces of
24 paper that lends some credibility to the notion
25 that there may be suspected alleged bookmaking

1 activity going on related to Union Vending. Now,
2 Agent Boldin wasn't looking for bookmaking
3 activity. He was looking for information related
4 to internet cafes, but he certainly didn't discard
5 those items that he found, and he kept them in the
6 back of his mind.

7 Fast forward to when he gets a search
8 warrant for Union Vending. And we have counsel,
9 we have Union Vending and Martin Sarcyk now
10 bringing their motion saying the search warrant
11 was improperly granted, the authority was
12 improperly conveyed to the officers because part
13 of the probable cause, the basis of that warrant,
14 relates back to three items pulled out of the
15 dumpster. And so they have brought this action
16 because the State has, in fact, engaged in a
17 warrantless search of the dumpster.

18 The State would suggest that the State
19 doesn't need a warrant to search the dumpster.
20 The State has provided the law, the relevant law,
21 in its response. The Defendants have provided
22 some relevant law, but have not provided the
23 fundamental law. In fact, the very case that they
24 cite comes from the same court that created the
25 test, and the case that they cite is the exception

1 to the Court's own rule, and the Court was very
2 happy when they read the opinion to see the Court
3 was showing that its test was, in fact, valid
4 because you can find a circumstance where there
5 was privacy in trash in a dumpster and that's why
6 their test is so good. That is what the Court is
7 saying.

8 The real case is the case before the case
9 Defendants cite which lays out the black letter
10 law, which says in 99% of the dumpsters there is
11 no expectation of privacy and it's just like trash
12 on a street.

13 At this time I would call to the stand
14 Agent Robert Boldin, unless the Court would like
15 to allow defense to make an opening statement.

16 THE COURT: No. I think,
17 Mr. DeVan, if you want to make remarks, opening
18 remarks, you're welcome to do that but not right
19 now.

20 MR. DeVAN: It's laid out in
21 our Brief. The Court is familiar with Greenwood
22 vs. California.

23 THE COURT: Thank you very
24 much.

25 Thereupon, the State of Ohio,

1 to maintain the issues on its part to be
2 maintained, called as a witness,
3 ROBERT BOLDIN, who, being first duly sworn,
4 was examined and testified as follows:

5 THE COURT: The chair does not
6 move; however, the microphone does. If you need
7 water, just get through this first portion then
8 we'll be fine.

9 Go ahead, Mr. May.

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11 DIRECT EXAMINATION OF ROBERT BOLDIN

12 BY MR. MAY:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. Introduce yourself for the record.

16 A. Agent Robert Boldin, B-o-l-d-i-n, agent with the Ohio
17 Investigative Unit, Department of Public Safety.

18 Q. For people that don't understand, what is the agency
19 that oversees the Ohio Investigative Unit?

20 A. We're a division of the Ohio Department of Public
21 Safety.

22 Q. And do you report to the Attorney General?

23 A. No, sir.

24 Q. Who do you report to?

25 A. Eventually we would report to the Governor's Office.

1 Q. Okay. How many years have you been an agent with
2 OIU?

3 A. I've been employed with them for eight and a half
4 years.

5 Q. And what is OIU charged with investigating?

6 A. The Ohio Investigative Unit is charged with criminal
7 and administrative violations occurring on any of Ohio's
8 liquor permit premises as they relate to alcohol
9 violations and any other criminal activity which occurs.

10 Q. What is the scope of an OIU's agent with regard to
11 liquor statute?

12 A. We conduct in essence general vice investigations for
13 the State of Ohio including prostitution, narcotics,
14 gambling.

15 Q. Okay. And with regard to gambling, were any
16 allegations made regarding conduct in Parma Heights?

17 A. Yes, there were.

18 Q. Could you tell us about those allegations, when, how
19 many?

20 A. Our agency received complaints regarding two liquor
21 permit premises within the City of Parma Heights. They
22 were identified as Buresti Enterprises commonly known as
23 Mister B's, and DAG Tavern which is commonly known as
24 Goodtime Charlies.

25 Q. Goodtime Charlies?

1 A. Correct.

2 Q. Goodtime Charlies II?

3 A. I believe the actual corporate or d/b/a name may be
4 Goodtime Charlies II. I believe the building is labeled
5 Goodtime Charlies.

6 Q. Could you lay out, Agent Boldin, for the Court the
7 basics of the investigation as applied to DAG and Buresti
8 Enterprises.

9 A. Over the course of several months beginning in
10 September of 2011 we conducted long-term investigations at
11 both of those premises into the alleged illegal gambling
12 operation. During the course of that investigation we
13 engaged in a variety of undercover operations, both at
14 those premises and at additional targets that we had
15 identified as being possibly related to those operations.

16 Q. What other targets did you identify?

17 A. One of those targets was identified as Martin Sarcyk
18 and a corporation that he was associated with, Union
19 Vending, in the City of Cleveland.

20 Q. And how did this particular corporation and this
21 individual come to your attention through your
22 investigation of Mister B's and Goodtime Charlies?

23 A. There were several instances where we became familiar
24 with them and their potential involvement. The first was
25 through a joint investigation being conducted by the

1 United States Secret Service Northern Ohio Organized Crime
2 Task Force in which they had obtained in excess of 100
3 financial documents detailing a financial relationship
4 between Union Vending, both of the liquor permit premises
5 in question, and a corporation identified as VS2
6 Worldwide.

7 The second piece of information was obtained
8 through the investigation of Buresti Enterprises. That
9 was an additional financial document issued by Union
10 Vending to -- a handwritten financial document that
11 appeared to be a tear-off receipt in which they had
12 detailed some financial transactions that was recovered
13 from Buresti Enterprises.

14 Q. So, in effect, are you saying that you had searched
15 Buresti Enterprises and you had searched Goodtime Charlies
16 II or its corporate entity, or both, and those gave you
17 some indicia of Union Vending's involvement?

18 A. The bank records were obtained through grand jury
19 subpoenas. The documents recovered on Buresti Enterprises
20 was recovered through a trash pull.

21 Q. Was there anything else that suggested you might want
22 to take a look at Union Vending?

23 A. I believe those were the most notable. There were
24 some other conversations regarding their potential
25 involvement, but those were the only things that we could

1 verify.

2 Q. With that information, what did you do?

3 A. We went to the premises of Union Vending, which was
4 located at 13 -- let me get the address correct, 13730
5 Enterprise in the City of Cleveland for the purpose of
6 gaining intelligence about the premise and to look at the
7 possibility of conducting a trash pull at that premise.

8 Q. Can you describe what you observed when you arrived
9 on scene.

10 A. The property sits in a commercial area. It's
11 situated on the north side of the road. There was a large
12 paved area between that business and the business to the
13 west of it in which there was common access between both
14 of the businesses. From the street we were able to see
15 the trash dumpster in the rear portion of the parking lot
16 on the west side of the building located towards the rear
17 of the property close to I believe there might have been a
18 fence, ivy grown, but under that was a fence separating it
19 from residential properties located behind it to the
20 north.

21 Q. Now, just to clarify that fence, where is the fence
22 located in relation to this dumpster?

23 A. Residential fence located separating the businesses
24 on Enterprise from the residential properties behind it.

25 Q. So the fence is on the property line?

1 A. Correct.

2 Q. The dumpster is inside of the fence?

3 A. On the Enterprise Parkway side of the fence. There
4 was no fence or obstruction or gates or any apparatus
5 between our position of the street and the dumpster.

6 MR. MAY: Permission to
7 approach, Your Honor?

8 THE COURT: You may.

9 Q. (BY MR. MAY) Agent Boldin, I'm now directing your
10 attention to what's been marked for identification
11 purposes of this hearing as State's Exhibits 1 through 4.
12 Can you please look through these items.

13 A. Exhibits 1 and 2 are both Google Earth images
14 publicly available through their application showing the
15 street view from Enterprise and the business of Union
16 Vending located on the right side of the picture.

17 Q. Can you see a dumpster?

18 A. The dumpster's located in the manner in which I
19 described it; at the rear of the property on the west side
20 in an open area between that business and another to its
21 west.

22 Q. And, in fact, those businesses seem to share that
23 particular space?

24 A. That is correct.

25 Q. The cars are parked on one side, cars are parked on

1 the other side?

2 A. That's correct. It's one large paved area between
3 both of the businesses providing access to both businesses
4 and their parking areas.

5 Q. There's actually two dumpsters?

6 A. There a dumpster to the west located next to the
7 business to the west of Union Vending.

8 Q. First let me clarify something here. How did these
9 images come about?

10 A. We obtained those from Google Earth. Those images
11 were obtained recently. They were identical to images we
12 had obtained prior. Those were recent images from Google
13 Earth.

14 Q. Keeping in mind Google Earth's images are from
15 whenever Google made these?

16 A. That is correct. We don't have a date by which to
17 verify when that photograph was taken.

18 Q. Going to we'll call it a photograph because it's sort
19 of a world scan by Google with their 3D cameras, do those
20 images fairly and accurately depict the location of the
21 dumpster at Union Vending?

22 A. They do. In these images these dumpsters are located
23 in a similar if not identical position. I'm sure
24 dumpsters move slightly when emptied. A similar location
25 as to when we observed them.

1 Q. In fact, some dumpsters even have wheels, correct?

2 A. Correct.

3 Q. Now, directing your attention to what's been marked
4 for identification as State's Exhibits 3 and 4, what are
5 those and why do we have those as well?

6 A. Exhibits 3 and 4 contain eight photographs that were
7 taken of the premise of Union Vending, the common access
8 driveway, and the location of the dumpster taken on
9 Saturday, December 8th, 2012.

10 Q. And why did you take those?

11 A. For comparison purposes and to show that the dumpster
12 presently still sits in an identical or similar location
13 as it did at the time that we observed it.

14 I would note that in these photographs there is a
15 different dumpster being blue in color as opposed to the
16 brown that we had ultimately conducted the trash pull in,
17 and that's photographed or imaged in the Google Earth
18 photographs.

19 Q. Would it be fair to say goes to the point that
20 sometimes these dumpsters are fungible, companies move
21 them around?

22 A. They are capable of being moved or relocated or
23 changed.

24 Q. So they're owned by the companies?

25 A. Typically speaking, it's the refuse company that owns

1 the receptacle.

2 MR. DeVAN: Objection. Unless
3 he knows.

4 Q. (BY MR. MAY) Are you familiar with the company AVI?

5 A. I am not.

6 Q. Okay. Agent Boldin, can you describe to the Court
7 the manner in which you went to this dumpster.

8 A. Where the dumpster was located we pulled in that
9 common access driveway between the two businesses, pulled
10 our vehicle to the rear of the property, got out, and were
11 able to walk up to the dumpster unobstructed again with no
12 fences, gates, or any other apparatus.

13 Q. Did the dumpster have a lid?

14 A. It did.

15 Q. Was the lid open or closed?

16 A. One side was open I believe and one side was closed.

17 Q. Okay. And were there fixtures or pieces on the
18 dumpster that would allow it to be padlocked?

19 A. I want to correct that previous answer because I'm
20 not sure if one was open or one was closed. There were a
21 number of dumpsters that we examined. I would have to say
22 I'm not sure if they were both closed or not.

23 Q. This dumpster, based on what you said, it has two
24 separate flap lids?

25 A. Yes.

1 Q. Okay. Going back to my question, do you recall at
2 the time was there any means of locking that dumpster
3 closed?

4 A. No.

5 Q. Were there any chains visible?

6 A. No.

7 Q. Big dogs in the backyard?

8 A. No.

9 Q. Surveillance lights?

10 A. Not that we were aware of.

11 Q. This dumpster's in a parking lot; is that correct?

12 A. Correct.

13 Q. And did anyone come out when you drove up to the back
14 and parked?

15 A. No.

16 Q. Did anyone say anything to you when you were looking
17 at the dumpster?

18 A. No.

19 Q. Were there any signs on the dumpster; danger,
20 hazardous materials, et cetera, et cetera?

21 A. I seem to recall a warning sign regarding don't play
22 on, in, around, depicting a small child in a terrible
23 dumpster accident with the child falling into the
24 dumpster.

25 Q. Okay. That's definitely a good picture to keep kids

1 away.

2 How much was in the dumpster in terms of refuse
3 when you encountered it?

4 A. It was probably one-quarter full.

5 Q. Okay. And how did you go about examining the
6 contents of this dumpster?

7 A. I climbed inside of it and went through the items
8 that were inside.

9 Q. Okay. You went through all the items inside?

10 A. Yes.

11 Q. Okay. And what items were inside? Could you give us
12 an example including not the things you were looking at
13 specifically?

14 A. There was some styrofoam -- rectangle styrofoam
15 packing products, there were some what appeared to be
16 construction materials, small pieces of wood, toilet
17 refuse, tissues. There was a variety of discarded trash
18 in there.

19 Q. Okay. Can you tell us how you recovered the items
20 that have come into question now.

21 A. There were a number of loose items that struck me as
22 being office or similar trash, papers, paperwork,
23 envelopes, that were loose and unbagged in one corner of
24 the dumpster.

25 Q. Did you have any ability to identify where those

1 originated?

2 A. There were pieces -- Am I permitted to refer to the
3 warrant?

4 Q. I believe so.

5 THE COURT: Yes.

6 A. Okay. There were several pieces of U.S. Mail that
7 were addressed to both Martin Sarcyk and to Union Vending
8 indicating the Enterprise address for which we were
9 located at for the dumpster.

10 Q. (BY MR. MAY) Okay. What was the proximity of those
11 pieces of mail in relation to the items that you were
12 interested in?

13 A. They were located together. They were in that corner
14 with these loose items so they weren't bagged together.
15 But they were -- there were layers or levels of various
16 papers, and through those layers and levels were spread
17 out these pieces of U.S. Mail.

18 Q. And what did you do when you found those items?

19 A. Those were secured as evidence.

20 Q. How many items did you take from the dumpster?

21 A. And that's why I referred to the warrant to see if I
22 had a specific number in the warrant. I do not. It just
23 says numerous. I don't recall how many it was, but it was
24 several. More than one. If I recall, I had located at
25 least three, but I don't remember how many more than that.

1 Q. How did those items affect the forward momentum of
2 your investigation?

3 A. The discarded U.S. Mail is an indicator of the source
4 of that trash. It verifies the fact that the other items
5 in that dumpster would have come from the same premise as
6 the U.S. Mail because they would all have been certainly
7 discarded together.

8 Q. Okay. In fact, there's a second dumpster located for
9 the other business, right next to the other business; is
10 that correct?

11 A. Correct.

12 Q. Now, when you left the dumpster how did your
13 investigation proceed?

14 A. Based on the cumulative items relating to Union
15 Vending, the trash pull, and the other portions of the
16 investigation that we had conducted, that ultimately led
17 to the requesting of a search warrant through Cuyahoga
18 County Common Pleas Court.

19 Q. Were the items recovered from the dumpster definitive
20 or conclusory for you in terms of seeking a search
21 warrant?

22 A. In and amongst themselves, no.

23 Q. Did they add in any way to your desire for a search
24 warrant?

25 A. Yes.

1 MR. MAY: Thank you.

2 THE COURT: Thank you.

3 Mr. DeVan.

4 - - - o0o - - -

5 CROSS-EXAMINATION OF ROBERT BOLDIN

6 BY MR. DeVAN:

7 Q. Agent Boldin, when you first came across the name of
8 Martin Sarcyk or Union Vending you took steps in order to
9 determine where to locate Martin Sarcyk or Union Vending?

10 A. We conducted research into the organization -- the
11 company I'm sorry, of Union Vending, yes.

12 Q. And you checked with the Secretary of State for any
13 sort of corporate registration or partnership
14 registration, things of that sort?

15 A. Correct.

16 Q. And as part of that, you learned that Union Vending
17 was located on Enterprise Avenue, correct?

18 A. I don't know if that was solely from Secretary of
19 State records. There were other means by which we
20 verified the business address.

21 Q. And did you -- And when I say you, did you or any of
22 your fellow agents, of course, check the Recorder's Office
23 from Cuyahoga County to determine property ownership?

24 A. Not that I recall.

25 Q. In any event, you learned that Union Vending was

1 doing business out of that address on Enterprise Avenue,
2 correct?

3 A. That's correct.

4 Q. And you knew that Union Vending was owned and solely
5 owned by Martin Sarcyk, correct?

6 A. Yes. We had identified Mr. Sarcyk.

7 Q. And Union Vending's property, it shares a common
8 drive, correct?

9 A. Correct.

10 Q. But beyond the common drive then there are two
11 businesses, one on each side of that drive with their own
12 parking spaces, correct?

13 A. I would assume that the parking spaces are specific
14 to the individual businesses, but there's no separation so
15 I don't know that I can answer that.

16 Q. And each of those businesses had what appeared to be
17 its own dumpster or trash-type receptacle on its
18 respective property, correct?

19 A. That's correct.

20 Q. Now, this particular dumpster was located 220 feet
21 from the street; was it not?

22 A. I didn't take a measurement, so I would have to
23 estimate, but that sounds fairly accurate.

24 Q. Fair enough. It's a good estimate, right?

25 A. Yes.

1 Q. All right.

2 MR. DeVAN: May I stand next to
3 the witness?

4 THE COURT: You may.

5 Q. (BY MR. DeVAN) Agent Boldin, showing you what's been
6 marked as Defendant's Motion Exhibit A, would you agree
7 that this appears to be a Google aerial view of the
8 property in question?

9 A. Yes, it does appear to be so.

10 Q. And on this aerial view in this particular picture it
11 depicts the dumpster in question or a dumpster in question
12 towards the rear of the property, correct?

13 A. Correct.

14 Q. And that is where the dumpster was when you entered
15 it on that date earlier this year, correct?

16 A. Again, if not exact, substantially similar.

17 Q. And it was on a concrete pad, correct?

18 A. I believe so.

19 Q. Which appeared to be a concrete pad designated for a
20 dumpster, correct?

21 A. It was on a concrete pad.

22 Q. There weren't any other concrete pads throughout the
23 Union Vending part of the property?

24 A. Not that I observed.

25 Q. Behind this dumpster is an area you described as

1 residential fence dividing Union Vending from the houses
2 on the other part of the street?

3 A. Yes.

4 Q. There's parking on Union Vending's side of the
5 property?

6 A. Correct.

7 Q. Did you make any sort of attempts to determine if
8 Union Vending was open to the public or open to the owners
9 and employees of Union Vending?

10 A. I'm not sure what you mean.

11 Q. For instance, it didn't have a sign saying public
12 welcome?

13 A. No.

14 Q. It didn't have a sign saying pinball machines, you
15 come in here and get them?

16 A. Not that I recall.

17 Q. There was no advertising of any sort?

18 A. No.

19 Q. In other words, it appeared to be a private
20 enterprise on private land for the sole purposes of its
21 employees and its owner, correct?

22 A. I can't speak to what their intention was.

23 Q. Showing you what's been marked as Defendant's Motion
24 Exhibit B, would you agree that this appears to be a
25 close-up view of what is depicted in Defendant's Motion

1 Exhibit A?

2 A. It would appear to be, yes.

3 Q. Would you agree these appear to be fair and accurate
4 representations of the location of the dumpster on the
5 date in which you entered it?

6 A. I believe so, yes.

7 Q. Now, you did some surveillance before you went in for
8 that trash pull, correct?

9 A. Correct.

10 Q. And that surveillance that you did included
11 drive-bys?

12 A. Correct.

13 Q. And you noticed -- Were those drive-bys during the
14 daytime?

15 A. There was at least one that was during the day.

16 Q. In your experience as a law enforcement officer
17 you've done trash pulls on private residences, correct?

18 A. Correct.

19 Q. When you go to a trash pull for a private residence
20 oftentimes the trash cans might be visible from the street
21 back near the garage but they're not necessarily on the
22 street, correct?

23 A. Correct.

24 Q. And you would not enter a private residence for
25 purposes of a trash pull for a trash can that was way back

1 near a resident's garage, would you?

2 A. That's going to be a difficult question to answer.

3 There are a variety of circumstances in which the trash
4 could be placed, so I don't think that I can answer that
5 question.

6 Q. If you can't answer it, you can't answer it. In any
7 event, that trash bin in question was not located out in
8 the street of Enterprise Avenue, was it?

9 A. Not in the street.

10 Q. It was not on the street in which you did your
11 surveillance before you did the trash pull?

12 A. No.

13 Q. On how many occasions did you drive by Union Vending
14 for purposes of doing surveillance before the trash pull?

15 A. I believe there was one surveillance visit and then
16 there was surveillance prior to conducting the trash pull.

17 Q. And when you say one surveillance visit and then
18 surveillance before the trash pull, that second
19 surveillance was on the night you did the trash pull?

20 A. Yes, sir.

21 Q. And that first surveillance was during the day?

22 A. Yes.

23 Q. And you noticed -- And was it during the week?

24 A. I don't recall. I'm actually not the one who
25 conducted that surveillance.

1 Q. Based on your discussions with your fellow officers,
2 did you learn whether or not there were cars in that
3 parking lot which appeared to be cars from the employees
4 and owner?

5 A. There were vehicles present, yes. I don't know who
6 they belonged to.

7 Q. You waited until at night, in fact, in the early
8 morning hours?

9 A. Yes, sir.

10 Q. And how early in the morning?

11 A. I believe it was about 4:15.

12 Q. 4:15. What date was that trash pull?

13 A. January the 19th, 2012.

14 Q. Several days before the actual searches that were
15 conducted in this case?

16 A. That's correct.

17 Q. Now, you did not wait, for instance, for that trash
18 to be moved out to the street for a trash hauler to take
19 it away, correct?

20 A. No, sir.

21 Q. And inside that particular trash bin -- Well, before
22 we get to that, you said that there were two lids,
23 correct?

24 A. Correct.

25 Q. And you do not recall, but at a minimum one was

1 closed, correct?

2 A. Correct.

3 Q. And it may be that both of them were closed, correct?

4 A. That's correct.

5 Q. And the purpose of lids on trash bins are there are
6 several purposes, are there not?

7 A. I would imagine so, yes.

8 Q. For instance, to keep animals out of the trash?

9 A. Reasonable.

10 Q. Like putting a lid on a trash can, right? But in a
11 big trash bin also as you said there's a concern about
12 other people getting into the trash, correct?

13 A. I don't recall saying that.

14 Q. Well, there was a sign about children not playing
15 around the trash bins, right?

16 A. Correct.

17 Q. You took that to mean as a safety warning, correct?

18 A. Correct.

19 Q. And so the users and owners of the trash bin were
20 apparently expressing a certain amount of attempt to keep
21 people, whether they be children or otherwise, away from
22 that trash bin, correct?

23 A. I believe it was specific to children.

24 Q. However, the lids were closed, at least one, perhaps
25 two?

1 A. That's correct.

2 Q. That would indicate that someone doesn't want someone
3 going in there, correct?

4 A. I can't speak to the things that it would indicate.

5 Q. All right. Now, you could have obtained or you could
6 have attempted to wait until the trash was hauled by a
7 trash hauler and then gone into that bin, could you not?

8 A. I could have, yes.

9 Q. But you did not do that?

10 A. That's correct.

11 Q. You did not wait until it was taken off the property
12 of Union Vending, instead you entered onto the property of
13 Union Vending?

14 A. That's correct.

15 Q. Did you drive into Union Vending or did you park in
16 the street and walk back there?

17 A. We drove back to the parking -- the common parking
18 area.

19 Q. How many agents went back there?

20 A. I believe there were two.

21 Q. When you say two, you and one other or you and two
22 others?

23 A. I believe it was myself and one other law enforcement
24 officer.

25 Q. One car? Two cars?

1 A. One car.

2 Q. You waited until 4:00 in the morning?

3 A. That's correct.

4 Q. The reason you waited until 4:00 a.m. in the morning
5 is you knew if you did this in the middle of the day
6 someone might see you, correct?

7 A. That's correct.

8 Q. Someone might say what the hell you doing in my
9 trash, right?

10 A. That's correct.

11 Q. Which, of course, you were trying to avoid someone
12 exercising their right to say get out of my trash?

13 A. That's not what we were trying to avoid.

14 Q. Excuse me?

15 A. No. We were trying to avoid detection, not
16 specifically necessarily a specific contact.

17 Q. Whether it was detection by someone who simply didn't
18 want you rummaging around in their trash is immaterial,
19 isn't it, Agent?

20 A. That's your opinion, not mine.

21 Q. You did not take that trash from street or curbside?

22 A. That's correct.

23 Q. The trash bin was, as you say, one-quarter full?

24 A. Yes, sir.

25 Q. Now, it wasn't full, which would require someone

1 calling the hauling company to have it hauled away,
2 correct?

3 A. I don't know what their requirements are for when
4 they haul out.

5 Q. Now, you made no attempt to know who the trash
6 hauling company was, that's correct?

7 A. That's correct.

8 Q. You made no attempt to determine whether they take it
9 on a routine monthly basis or get a call from Union
10 Vending and say our trash is ready to be hauled; is that
11 right?

12 A. That's correct.

13 Q. Now, it goes without saying, does it not,
14 Agent Boldin, you did not ask permission of anyone to
15 enter onto the property of Union Vending, correct?

16 A. That is correct.

17 Q. Now, Agent Boldin, you secured what you have
18 described as three documents, correct?

19 A. That is correct.

20 Q. Did you take anything else out of the trash and then
21 start going through it, or did you actually secure those
22 three documents and walk off with only those?

23 A. The pieces of U.S. Mail I mentioned previously?

24 Q. Did you put them all in a bag?

25 A. Yes.

1 Q. How big of a bag?

2 A. I don't recall the size. I mean, it would have been
3 smaller. I mean, we were only taking documents. We
4 weren't taking large items.

5 Q. Did you fill more than one bag with documents?

6 A. I believe initially the items were placed together,
7 and then they would have been separated at a later time
8 for purposes of tracking.

9 Q. Did you fill more than one bag with documents?

10 A. Initially or ultimately? At the time --

11 Q. At the time of your dumpster diving on the night in
12 question, did you fill more than one bag with documents?

13 A. No, sir.

14 Q. Or trash?

15 A. One bag.

16 Q. Was it a 13-gallon bag? 20-gallon bag? 30-gallon
17 bag?

18 A. It was an evidence bag.

19 Q. Excuse me?

20 A. An evidence bag.

21 Q. An evidence bag. Okay. You then basically took all
22 of that back to someplace for examination, to your office
23 perhaps?

24 A. Actually, Parma Heights Police Department.

25 Q. And while at the Parma Heights Police Department

1 that's when you separated it all and that's when you
2 determined what you had, correct?

3 A. I mean, we had an initial determination when we
4 recovered it out of the trash, but yes, we went through it
5 more thoroughly at a later time.

6 Q. You didn't realize you had what you considered to be
7 two betting slips until you wound up at the Parma Heights
8 Police Station, correct?

9 A. No. We knew that immediately. That's why they were
10 recovered.

11 Q. Let's talk about those betting slips. Now, those
12 betting slips, they were not completed, correct?

13 A. Correct.

14 Q. And they had football pools on them, correct?

15 A. Correct.

16 Q. The spread of games, correct?

17 A. Correct.

18 Q. And it had the dates of the games, correct?

19 A. Correct.

20 Q. And it was both NFL and college games?

21 A. I believe so, yes.

22 Q. And there's a tear-off portion at the bottom,
23 correct?

24 A. Yes.

25 Q. However, you're familiar with bookmakers, correct, or

1 you claim to be?

2 A. Yes, sir.

3 Q. Okay. When someone places a bet with a bookmaker
4 they fill out the teams, whether they're taking the dog or
5 not, whether they're taking the points or not?

6 MR. MAY: Excuse me, Your
7 Honor. I thought we were talking about things
8 from the dumpster, not what they mean at this
9 point.

10 THE COURT: I would agree with
11 you. Initially I thought we were going to limit
12 or confine this portion of the hearing
13 specifically to the idea of whether or not the
14 dumpster itself and the legality of entering the
15 premises was in issue, not the actual issues as it
16 relates to betting slips.

17 MR. DeVAN: Judge, I will
18 address that during the Franks portion of our
19 proceedings.

20 Other than the Franks issues, we can pass.

21 THE COURT: Thank you very
22 much, Mr. DeVan.

23 Any Redirect on that issue?

24 MR. MAY: Nothing based on
25 that, Your Honor. Thank you.

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THE COURT: Thank you.

Agent Boldin, I'm going to ask you to step down at this time. We're going to take a recess. Say take our luncheon recess, if you would like to choose that.

Ladies and gentlemen, let's take approximately one hour for a luncheon recess. So I'd like all of you back here at approximately 1:15 to begin what we'll call the second portion of our testimony as it relates to the second prong of the Motion to Suppress. Thank you.

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(Thereupon, a luncheon recess was had.)

- - - o0o - - -

1 MONDAY AFTERNOON SESSION

2 DECEMBER 10, 2012

3 PROCEEDINGS

4 - - - o0o - - -

5 CALABRESE, DEENA, J.: Back on the record
6 in Case No. 563092. I have already previously
7 captioned this case before, and we have completed
8 we'll call it the first part of the Motion to
9 Suppress which was filed by Mr. DeVan on behalf of
10 Union Vending and its owner. And so at this point
11 we're moving on to what we'll call the second
12 prong of our Motion to Suppress, which was filed
13 by VS2 Worldwide Communications, and that would
14 be, of course, at this point the Court's intention
15 to proceed with what we'll call the second prong
16 of our Motion to Suppress which is from
17 Mr. Malarcik and his representation of the
18 corporation, as well as VS2. That goes again to
19 the heart of the issue that we have in front of
20 us, which is the question we've asked ourselves,
21 all of us, many times over as it relates to this
22 case's core issue; is sweepstakes technology
23 gambling or not.

24 For purposes of this hearing, one of the
25 issues that needs to be addressed right off the

1 bat is whether or not VS2, et al. has standing to
2 challenge the warrant at this time from the
3 perspective that you intend to challenge, and that
4 would be on the issue of the affidavit of the
5 officer himself and whether or not at this point
6 there are material omissions which created
7 Judge McClelland, if I'm not mistaken, signing off
8 on the warrants and proceeding as we have through
9 the course of this case, indictment, and of course
10 now assignment to this court. Lucky for me,
11 right?

12 However, for the purposes of this hearing,
13 we're going to say and I'm going to rule that VS2
14 has standing to proceed at this point. And in the
15 event that I, after additional review, change that
16 perspective, that will be something that I will
17 consider at a later time. So for the purposes of
18 this hearing alone, VS2 will have standing to make
19 that challenge.

20 So with that being said, Mr. May, I know
21 that we talked additionally about the idea that
22 based on the current case law in Ohio, I just had
23 the case, what is the case, Mr. Malarcik?

24 MR. MALARCIK: It's State vs.
25 Dibble, which was recently decided by the Ohio

1 Supreme Court on October 10th, 2012. Citation is
2 2012 Ohio 4630, D-i-b-b-l-e, Dibble.

3 THE COURT: So I have read this
4 case and I have reviewed the information, and so
5 what we will do at this point is we will follow
6 the procedure that's been outlined by the Ohio
7 Supreme Court as it relates to questioning, of
8 course, the officer on this particular case.

9 To begin with, I believe now at this
10 point, Mr. Malarcik, the burden will shift to you
11 to make a prima facie case in the event that I
12 continue to allow you to cross examine the
13 officer, so if you would.

14 MR. MALARCIK: May it please the
15 Court, I think the Court has correctly set forth
16 the procedure. It's a two-step procedure.
17 Initially the defense have a burden to show a
18 prima facie case of either material omissions or
19 reckless statements or false statements in the
20 affidavit. If after setting that forth the Court
21 does find that we've met our prima facie burden,
22 then pursuant to Franks vs. Delaware, pursuant to
23 Dibble, we're allowed to cross examine the
24 affiants.

25 In this case there are two affiants. What

1 I would like to do with the Court's permission is,
2 if permitted to cross examine, Mr. Schamel would
3 cross examine Agent Boldin and I will cross
4 examine Detective Scharschmidt. I would ask
5 Mr. Schamel to talk about the prima facie case in
6 terms of the Franks burden as to Agent Boldin,
7 I'll address it as to Detective Scharschmidt, and
8 obviously the State will have an opportunity to
9 respond.

10 THE COURT: Officer, you are in
11 the courtroom. We haven't had testimony
12 essentially related to this issue, although you
13 know there is a separation of witnesses filed, so
14 you're going to ask him to join counsel at the
15 counsel table?

16 MR. MAY: Permission to
17 approach the Bench?

18 THE COURT: You may.

19 - - - o0o - - -

20 (Thereupon, a discussion was
21 had off the record.)

22 - - - o0o - - -

23 THE COURT: Thank you for your
24 patience, everybody. I should note that you see
25 me looking at my computer over here, too. They

1 filmed a judge one time working on his computer,
2 and it looked bad to everybody in the courtroom.
3 So I always let you know I'm actually looking
4 things up or I'm pulling cases. I'm not doing my
5 Christmas shopping on Macy's online or anything.
6 Although it might be nice, right? Nonetheless,
7 that's what we're doing right now.

8 We are frankly discussing the way the
9 procedure is going to work in this particular case
10 because we are, as I suspect many of you
11 recognize, entering what is sort of a new area for
12 our state and our area as it relates to this law.
13 So I am attempting to cross all my t's and dot all
14 of my i's making sure we're following the
15 procedures pretty much as closely as we can to the
16 case law that currently exists so that we can
17 continue to map this out.

18 So what I'm going to do at this time, of
19 course, JD just stepped out so he will I'm sure
20 pop back in in one minute then we'll continue with
21 the procedure and the process and the way we
22 outlined. Mr. Malarcik, I think he's just letting
23 Detective Scharschmidt know that he's going to be
24 up next. Fair enough?

25 MR. MALARCIK:

 Okay.

1 THE COURT: JD, are you ready?

2 MR. MAY: One more second,
3 Your Honor.

4 THE COURT: Okay.

5 MR. MAY: Thank you. Ready.

6 THE COURT: You're welcome.

7 Thank you. So with that being said, Mr. Malarcik,
8 I know that I had indicated to you that we were
9 going to move onto the next phase, and I know that
10 for the purposes of the record there are many
11 attorneys in the courtroom I'm assuming who have
12 all identified and listed themselves for the court
13 reporter; however, you are taking the lead in this
14 particular area of examination; is that correct?

15 MR. MALARCIK: Yes, Your Honor.

16 THE COURT: So you will do the
17 cross examination of Agent Boldin?

18 MR. MALARCIK: No.

19 THE COURT: Is it the reverse?

20 MR. MALARCIK: Mr. Schamel will do
21 the cross examination of Officer Boldin. I will
22 cross examine Detective Scharschmidt.

23 THE COURT: Everybody else, all
24 attorneys involved, agree that's the way the
25 procedure is going to work; is that correct,

1	everybody?
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2 MR. DeVAN: I do have our own
3 Franks issue, though, Judge, on behalf of
4 Defendant Sarcyk and Union Vending, so I would ask
5 permission to when they are done, with the least
6 amount of duplication, enter into those areas
7 which are in effect in our motion.

8 THE COURT: Very good,
9 Mr. DeVan. Anything additionally that needs to be
10 explored, I'm happy to allow you to do that.

11 | MR. DeVAN: Thank you, Judge.

12 THE COURT: Mr. May, I know
13 once again you want to preserve your issue of
14 standing as it relates to this. The State is not
15 conceding that that issue does not exist; however,
16 once again, for the purposes of this hearing alone
17 I am allowing standing for VS2, et al., and we
18 will proceed with that in mind.

19 Do you want to go ahead, Mr. Malarcik or
20 Mr. Schamel, and lay out your prima facie case?

21 MR. SCHAMEL: Good afternoon,
22 Your Honor. Mark Schamel on behalf of VS2
23 Worldwide Communications, P&E Technologies,
24 Phillip Cornick, and Richard Upchurch.

25 | Your Honor, as we discussed and as are

1 found in our pleading I just referenced for
2 purposes of inclusion for today's hearing, the
3 motion that was filed titled Amended Motion to
4 Suppress Evidence With an Evidentiary Hearing
5 Requested, Government's Opposition to that Motion,
6 and our Reply which was filed last week, in
7 particular, we laid out some issues to make our
8 prima facie showing as it relates to the
9 affidavits that were signed by Judge McClelland on
10 Mister B's, Goodtime Charlies, and Mr. Malarcik
11 will talk in a minute about Sweepnet. I'm
12 specifically dealing with the issue as it relates
13 to Officer Boldin in that Officer Boldin made a
14 variety of material omissions and misstatements in
15 the information that he gave and the information
16 that he withheld from Judge McClelland.

17 THE COURT: Okay.

18 MR. SCHAMEL: In particular,
19 we're talking about some of the -- I'll go through
20 them just generally because I know Your Honor's
21 read these motions, but one of the most important
22 ones was that there was a failure to acknowledge
23 by the officer in his sworn affidavit the fact
24 that there was a purchase only of computer time
25 and that at no time did he ever purchase

1 sweepstakes points. This coupled with the use of
2 this sort of inflammatory language calling it
3 gambling, calling it the gambling jargon and
4 technology we referred to in our motion, these
5 issues make it appear as though it was something
6 entirely different than it was. When you couple
7 those with the fact that Agent Boldin was aware,
8 and certainly should have been aware, that in the
9 City of Parma Heights licenses had actually been
10 issued for these establishments in exactly what
11 they were, as sweepstakes, and there had been
12 applications for licenses; that the licenses had
13 been approved; that the various stand-alone
14 computer terminals that were contained in these
15 cafes had actually been reviewed and had been
16 given -- they had little stickers on them, all of
17 this was left out. None of this was made known.
18 The way the affidavit reads if you read it, and
19 know that we provided, Your Honor, I think there's
20 two, there's a highlighted portion --

21 THE COURT: There is.

22 MR. SCHAMEL: -- which talks
23 about the aspects of it that should not have been
24 in or that were misrepresented, and then there's
25 the other part which we've produced as though the

1 affidavit would look with those stricken. So when
2 we go through today, what we anticipate with the
3 examination of these two officers, the agent and
4 the sergeant, that we would show that without that
5 under the Franks v. Delaware, and then, Your
6 Honor, we've already talked about the Dibble Case,
7 under those standards that there would not be
8 probable cause and Judge McClelland would not have
9 signed those warrants.

10 I accede the floor to -- Unless Your Honor
11 has specific questions, I accede the floor to
12 Mr. Malarcik.

13 THE COURT: So, Mr. Schamel,
14 you're suggesting, and I know I looked through
15 both sets of affidavits, the first affidavit that
16 I see from Judge McClelland where Judge McClelland
17 reviewed indicates there's highlighted portions
18 which you're suggesting had they not been included
19 in this affidavit, and then coupled with the fact
20 they've been crossed out in the subsequent
21 affidavit that you provided to the Court, that
22 Judge McClelland may or may not have signed off on
23 this, but it's your contention, of course, he
24 would not have signed this warrant to begin the
25 search; is that correct?

1 MR. SCHAMEL: That's correct,
2 Your Honor.

3 THE COURT: Okay.

4 MR. SCHAMEL: A very fine point
5 on it. It's not just the things that were in
6 there that should not have been in there or should
7 not have been laid out the way they were laid out,
8 but the other things we would contend deliberately
9 were not put in there. It's a combination. You
10 sort of get a ground swell of those two different
11 types of sins of omission and sins - and I use
12 this term not in a pejorative way - but
13 misrepresentations as to what was actually going
14 on in those cafes. Had it been done properly,
15 there is no warrant because there is no probable
16 cause.

17 THE COURT: All right. You're
18 suggesting that the use of words like gaming or
19 scheme or that is what, in fact, is creating a
20 misleading presentation to Judge McClelland and/or
21 this court, for example, and that, in fact, is not
22 accurate?

23 MR. SCHAMEL: That is correct,
24 Your Honor.

25 THE COURT: Okay.

1 MR. SCHAMEL: And also I go even
2 further to say that we've been provided a number
3 of undercover videotapes in addition to the
4 affidavit. We know - and this is one of the
5 things we're going to get into in the examination
6 - what was in those particular stores when the
7 officers went in.

8 And there were four visits at Goodtime
9 Charlies, four visits at Sweepnet by Detective
10 Scharschmidt, and four visits to Mister B's.
11 During those visits -- And we have, and I can show
12 them to Your Honor, what we already included in
13 these motions is what was on the wall. They're on
14 the wall. They have the rules. What was on the
15 wall as far as the sweepstakes odds.

16 When you look at his affidavit and it
17 pretends to portray something that's not a
18 sweepstakes, as though the sweepstakes is not
19 used, no words, and you can't -- I mean, literally
20 you cannot walk into one of these establishments,
21 walk in and purchase computer time, which is the
22 only thing that is sold there, without being faced
23 right in front of you in very large bold print in
24 English that there are free plays available and
25 this is how you get plays, this is sweepstakes and

1 this is how it works, this is the odds of the
2 sweepstakes.

3 THE COURT: What are the odds
4 of the sweepstakes?

5 MR. SCHAMEL: Depends on the
6 different sweepstakes. Each one is independently
7 audited. I'm going to stop before I go too deep
8 into that because I went to law school because I'm
9 not very good at math, Your Honor. Each of these
10 pools, they have a pool for each sweepstakes for
11 when they work, when the pools are put together
12 for an individual sweepstakes, it's a finite pool,
13 has a certain number of winners on that
14 sweepstakes that odds relate to that sweepstakes.
15 When it expires, there is new odds to the
16 sweepstakes for the new pool that goes up.

17 THE COURT: I only mention this
18 because when I was reviewing the Medina case that
19 recently came out the judge involved in making
20 that determination seemed focused on the
21 difference in the odds that were being played,
22 from what I recall. But that's just separate and
23 apart. I wanted to know if there was some formula
24 that was being created, and there is a formula?

25 MR. SCHAMEL: There is.

1 THE COURT: As part of the
2 computer for VS2?

3 MR. SCHAMEL: That formula is
4 made known when these individual cafes go into
5 business and they do business with the VS2
6 software and his license is being approved by the
7 various towns.

8 THE COURT: How do the licenses
9 work as an aside?

10 MR. SCHAMEL: I'm not sure I
11 understand, Judge.

12 THE COURT: You indicated each
13 of the Parma Heights machines has a stamp or
14 sticker on them that they were, in fact, licensed
15 by the community that they were in, correct?

16 MR. SCHAMEL: That is correct.

17 THE COURT: People have to go
18 in and they went to their local government?

19 MR. SCHAMEL: That's correct.

20 THE COURT: And they said I
21 want to open an internet cafe and I'm going to
22 purchase the requisite license?

23 MR. SCHAMEL: That's correct. I
24 can mark one that's been included for Your Honor
25 that's in the motion.

1 THE COURT: Can I just see it
2 separately. That's fine. Just for my own
3 purposes.

4 MR. MAY: That doesn't have
5 to do with machines.

6 THE COURT: I just want to see
7 it for my own purposes, that's all, without having
8 to look through the book.

9 MR. SCHAMEL: May I approach,
10 Your Honor?

11 THE COURT: You may.

12 MR. SCHAMEL: Copies of license,
13 and I have not marked those, Your Honor.

14 THE COURT: Thank you.

15 MR. SCHAMEL: They are contained
16 as well in the motion that was filed and were part
17 of the discovery packet given by the government.

18 THE COURT: Thank you. All
19 right. Mr. Schamel, that accounts for my
20 questions at this point.

21 MR. SCHAMEL: May I make one
22 final point, if I may?

23 THE COURT: Sure.

24 MR. SCHAMEL: For purposes of
25 making a record, if Mr. May intends to appeal at

1 some point on this, in addition to what was seen
2 with the naked eye when you walk into individual
3 cafes when you see them on the wall, what you
4 would see at the point of sale, which is referred
5 to sometimes as the POS, as being able to redeem
6 the sweepstakes right there when you make your
7 purchase of your internet time and you get a
8 sweepstakes, you don't have to actually go play
9 these fun games. You don't have to do that. You
10 could swipe right there. There are other copies
11 of the odds. There's more information about this
12 being a sweepstakes and more information about the
13 ability to get free entries with no purchase
14 necessary. There is no purchase involved in these
15 particular games. Then when the agent goes to the
16 actual computer, the computer screens themselves
17 require you to go through screens where you have
18 to affirmatively click onto things on the screen
19 to indicate that you understand and have seen and
20 accept the rules. All of this was omitted. None
21 of this was part of the affidavit that was
22 provided.

23 THE COURT: Okay. Thank you.

24 MR. SCHAMEL: Thank you, Your

25 Honor.

1 THE COURT: Mr. Malarcik.

2 MR. MALARCIK: Thank you, Your
3 Honor.

4 MR. MAY: Your Honor, one
5 thing based on Mr. Schamel's presentation there.
6 It's my understanding they're going to question
7 the witness about those particular points that he
8 just raised.

9 THE COURT: Yes.

10 MR. MAY: So that we're
11 actually hearing from someone who was actually
12 there and actually dealt with the machines.

13 THE COURT: Correct.
14 Absolutely.

15 So, Agent Boldin, I think you're aware
16 that you're going to be recalled as if on cross
17 examination essentially. So, you know, remember
18 this is an evidentiary hearing and the Rules of
19 Evidence are relaxed. I am at this point
20 interested in getting to the truth of this matter.
21 I'm asking questions that I need to know the
22 answers to, and there are thousands of pages of
23 information in front of me. And so if I'm asking
24 a question that seems perhaps not on a particular
25 point, like can I see the licenses for example,

1 it's only because I don't want to sift through all
2 of this information and just be distracted from
3 the actual argument.

4 With that being said, Mr. Malarcik.

5 MR. MALARCIK: Thank you, Your
6 Honor. Your Honor, you alluded to this this
7 morning; usually we're here, the State says your
8 client did X, Y, Z. He went into a bank with a
9 gun and robbed a bank, and we're saying no, we
10 have an alibi, we weren't there, we were at
11 church, or we were at the movies. And in this
12 case the conduct is essentially agreed to. The
13 issue is well, is that a crime or not. And I say
14 that, Your Honor, because it colors -- or my
15 opinion is it should color the type of an
16 investigation, the quality of an investigation,
17 and the depth of an investigation that needs to be
18 undertaken before you establish probable cause.

19 You know that there is a great deal of
20 controversy, discussion, debate, dialogue,
21 ordinances, laws, and motions about sweepstakes.

22 THE COURT: Absolutely. I've
23 had -- I'm up to here, right.

24 MR. MALARCIK: Absolutely.
25 There's not a single word to that effect in these

1 affidavits. And the beautiful thing about a judge
2 is curiosity. You had the ability to ask these
3 questions. Why? Because you were told those
4 things or you knew them. Hey, what's going on in
5 Parma Heights, I'd like to hear more about that.
6 You mean they have a licensing requirement? How
7 does that work? Judge McClelland was denied that
8 opportunity. If you read the affidavits for
9 Sweepnet and for Mister B's, there's none of that
10 discussion at all. And that goes to the
11 recklessness of the type of investigation.

12 If you want to find out whether something
13 is a crime or not, you know, is this vodka, how do
14 we figure that out?

15 THE COURT: Right.

16 MR. MALARCIK: You can taste it.

17 THE COURT: That would answer
18 that.

19 MR. MALARCIK: Judge, I would say
20 this tastes like vodka. I could say to you well,
21 Judge, there's some ingredients here, and here's
22 what I understand the ingredients to say. I could
23 look and see if that has been tested anywhere. Or
24 I could send it out to my own lab and have it
25 tested.

1 Well, in this case they wanted to know
2 what this system was, what is it, how does it
3 function, how does it operate, what does it do,
4 what doesn't it do. So they had some options.
5 They could have had it tested with their own
6 expert as many jurisdictions have. They didn't do
7 that. They could have looked at all the reports
8 to see what was out there, what have other experts
9 said about how this system operates. They didn't
10 do that. I should say they didn't tell Judge
11 McClelland that that exists. They could have read
12 the rules or the ingredients and say this is what
13 they say is in here or how it operates, and the
14 affidavits even fail to do that.

15 So Judge McClelland was denied the
16 opportunity to ask follow-up questions.

17 THE COURT: Let me ask you a
18 question. I mean, is the State of Ohio required
19 to include every ounce of information in an
20 affidavit that -- I mean, isn't it just a probable
21 cause? I mean, isn't it the lowest threshold in
22 our criminal standard? So, you know, I think that
23 anyone could come in and under any circumstance,
24 any investigation, say okay, so we need a warrant
25 signed on a murder, for example, and this is what

1 we found, this is where the bullet was, and this
2 is where the gun is, and, Judge, please let us
3 into the building so we can gather that
4 information. Does that mean the State is required
5 to put together a beyond a reasonable doubt
6 package of information for any judge signing a
7 warrant?

8 What makes this different, I guess is my
9 question to you. Because when I look over these
10 motions and when I look over the warrants, I can
11 certainly see that there is, as Mr. Schamel
12 pointed out, inflammatory language as it relates
13 to let's say calling it gaming or gambling, and
14 let's say that based on the Dibble Case I'm not
15 getting so excited about the word gaming or
16 gambling or victim for that matter based on our
17 Supreme Court's decision. But what is it about
18 these affidavits that would allow you to suggest
19 that this officer is misleading Judge McClelland?
20 What about the omissions is so impactive that
21 probable cause isn't made?

22 MR. MALARCIK: There's 12 of them,
23 and I'll name them for you.

24 THE COURT: Okay. That's
25 pretty efficient, right?

1 MR. MALARCIK: First of all,
2 Officer Scharschmidt says in his affidavit
3 Paragraph 2, I have 21 years' experience as a
4 police officer; I have 13 years' experience as a
5 detective; and I have training and experience in
6 investigating a wide-range of felony offenses
7 including gambling organizations and violators of
8 state gambling law. So he's holding himself out
9 as an expert in the area of gambling.

10 What he fails to tell Officer
11 McClelland --

12 THE COURT: Judge McClelland.

13 MR. MALARCIK: I'm sorry. --
14 Judge McClelland is he's not an expert in gaming
15 device classifications; that he lacks the formal
16 knowledge, training or experience to make that
17 determination that this particular device has the
18 definitional characteristics of a slot machine
19 versus a game of skill versus a game of chance
20 versus a scheme of chance versus a computer
21 sweepstakes device. He doesn't tell
22 Judge McClelland that he lacks that experience.
23 That's number one.

24 Number two, he doesn't share with the
25 Court any other expert opinions about VS2 meeting

1 the definitional characteristics of a lawfully
2 operating sweepstakes. And those exist. They're
3 there, all over the place. But he doesn't tell
4 Judge McClelland that you know what, there are
5 expert opinions about how this system operates.
6 He leaves that out. That's an omission.

7 Number three, he doesn't tell the judge
8 you know what, Ohio doesn't presently define
9 sweepstakes, but there's some federal law.
10 There's some federal law. And under the federal
11 law, sweepstakes is defined as a game of chance
12 without consideration. Pretty simple.

13 THE COURT: Correct.

14 MR. MALARCIK: A game of chance
15 without consideration. But he doesn't tell
16 Judge McClelland that definition under federal law
17 of a sweepstakes. So what is misleading is this
18 is a game of chance, this is a scheme of chance,
19 this is a slot machine, this is illegal gambling.
20 Well, what does Judge McClelland have to compare
21 that to? If he was given the definition of a
22 lawfully operating sweepstakes under federal law,
23 he would have something to compare it to or at
24 least do what you're doing, which is ask
25 questions, which is what we want the Court to do

1 to see if there is probable cause.

2 Number four, the officer does not tell
3 Judge McClelland that you know what, there's
4 actually an ordinance in Parma Heights that
5 defines what a computer sweepstakes device is. No
6 mention of that in the affidavit.

7 THE COURT: 751 we've been
8 speaking about?

9 MR. MALARCIK: Yes, exactly. So
10 not only does he leave that part out, but, number
11 five, he doesn't tell the Court that you know
12 what, not only is there a licensing and regulatory
13 scheme in Parma Heights, but that specifically
14 provides that you cannot get a sticker that
15 Mr. Schamel referred to if you're gambling.
16 That's in the ordinance. He doesn't tell it to
17 the judge.

18 And, number six, as you may guess, he
19 doesn't tell the judge that these devices that VS2
20 has in Sweepnet, these devices that VS2 has in
21 Goodtime Charlies and Mister B's, are licensed by
22 the City of Parma Heights to lawfully operate a
23 computer sweepstakes device.

24 Number seven, he does not tell the Court
25 that there are other experts that license and

1 certify the VS2.

2 You asked a question, you know, how does
3 the Parma Heights ordinance license these folks.
4 And you will hear, if you believe that this is a
5 prima facie case, you will hear the evidence is
6 well, there's an application process, and then
7 they turn it in, the city reviews it and they say
8 yes or no. What Judge McClelland didn't know is
9 well, there are other testing requirements in
10 other counties.

11 Summit County, for instance, in order to
12 be certified as lawfully operating a sweepstakes
13 computer terminal, you have to submit a report
14 from one of three independent certified
15 laboratories. Now, this isn't a laboratory that
16 VS2 picks. It's a laboratory that Summit County
17 says is certified as independent. Mr. Farley is
18 on that list. GLI from New Jersey is on that
19 list. Another company called BMM from Las Vegas
20 is on that list.

21 THE COURT: That's Summit
22 County's choices essentially?

23 MR. MALARCIK: Yes. Office of
24 Consumer Affairs for Summit County that says if
25 you want to lawfully run a sweepstakes you give us

1 a report from one of these independently certified
2 labs. We won't accept any others but these three.

3 THE COURT: Does Cuyahoga
4 County have anything similar to that? Is that how
5 things are licensed or designated in this county,
6 do you know?

7 MR. MALARCIK: Let me answer it
8 this way; Parma Heights does not require a
9 certified laboratory testing.

10 THE COURT: So basically you
11 come in, you say I filled out my application,
12 here's my \$350 fee. And by the way, is it the
13 person's belief that their machine is a
14 sweepstakes machine? Whose perspective are we
15 talking about? So, for example, could I go in
16 with say maybe my poker machine which I want to
17 present as a sweepstakes machine and get the
18 sticker and pay the fee, but in my head I know
19 it's a poker machine and not a sweepstakes
20 machine, could I go in and fill out that
21 information and get the certification? Because
22 Cuyahoga County doesn't have an independent expert
23 reviewing that information, so I guess from that
24 perspective is it possible then that an officer
25 would say to himself as he's going through the

1 affidavit well, maybe they went in and
2 fraudulently got these stickers, fraudulently
3 filled out this information, and therefore based
4 on what I'm observing with my eyes, my ears, my
5 own senses, this appears to me to be a machine or
6 a scheme of chance versus a sweepstakes? I mean,
7 it is possible?

8 MR. MALARCIK: It is absolutely
9 possible. Yes, you're absolutely right.

10 THE COURT: Fair enough. So if
11 you're viewing the evidence or the affidavit, for
12 example, from that perspective, then the officer -
13 and based on what I can see here - would not
14 necessarily be mistaken or he would not be
15 committing necessarily a fraud, but he would
16 simply be presenting what he is observing, fair
17 enough?

18 MR. MALARCIK: I understand
19 exactly what you're saying, Your Honor, and I
20 don't disagree.

21 THE COURT: It would be a lot
22 better if we did have an expert commission who
23 could say this is certified as a sweepstakes
24 machine. That would make this whole process a
25 nullity and we would all know then whether or not

1 these machines were sweepstakes, correct?

2 MR. MALARCIK: You're right,
3 correct. And I agree with you, and here's what I
4 would suggest.

5 THE COURT: Okay.

6 MR. MALARCIK: Your questions are
7 fantastic and they're all accurate and they're all
8 true.

9 THE COURT: Thank you,
10 Mr. Malarcik. I appreciate it so very much.

11 MR. MALARCIK: A reasonable
12 investigation. The next question is well, what
13 county does do that.

14 THE COURT: Right.

15 MR. MALARCIK: Summit does that.
16 So I can go and pull Mr. Farley's report out of
17 Summit County because it's public record --

18 THE COURT: Right.

19 MR. MALARCIK: -- and look at it
20 and see what the machines are, what the software
21 version is, all those numbers are on there, and I
22 can take that and I can walk over to Sweepnet and
23 I can compare that, what software version is here,
24 what machines are here, is this the same system
25 that's been certified in Summit by an independent

1 laboratory as a legitimate sweepstakes. An
2 officer could do that to answer all the questions
3 that you just raised.

4 THE COURT: Okay.

5 MR. MALARCIK: The officer didn't
6 do that in this case. And not only -- Let me say
7 it this way; I don't know if he did or didn't.

8 THE COURT: Okay.

9 MR. MALARCIK: What I do know is
10 that none of that was presented to
11 Judge McClelland --

12 THE COURT: Okay.

13 MR. MALARCIK: -- that that was
14 even an option.

15 THE COURT: Okay.

16 MR. MALARCIK: Further, Your
17 Honor, on May 24th, 2012, both the Ohio House of
18 Representatives and the Senate passed House Bill
19 386. May 24th. That bill was offered in the
20 House of Representatives in December of 2011. And
21 if given the opportunity to cross examine
22 Officer Scharschmidt, and if he holds himself out
23 as an expert in the area of gambling, I think a
24 legitimate question would be well, you were aware
25 that there was all this discussion about how to

1 define a sweepstakes and it started as far back as
2 December of 2011 when House Bill 386 was first
3 introduced, and you'll hear through evidence there
4 was five different versions of that House Bill and
5 eventually on May 24th, 2012, House Bill 386
6 passes. It now defines for the first time in the
7 State of Ohio how a sweepstakes legitimately
8 operates and what a sweepstakes terminal is and
9 isn't. That's not referenced in the affidavit to
10 Judge McClelland. Five days after House Bill 386
11 passes the House and the Senate. Five days after.
12 So is that a material omission, that for the first
13 time the State of Ohio defines what a legally
14 operating sweepstakes is, and the officer who's
15 investigating it doesn't bother to tell the judge
16 that? We believe that's a material omission.

17 Nowhere in the affidavit does
18 Officer Scharschmidt say you know what, there's
19 rules on the wall that talk about what the system
20 is, how it operates, what you can do, and what you
21 can't do. He doesn't tell Judge McClelland that.
22 Now, I'm not suggesting that just because there's
23 something printed on the wall that it's exactly
24 how it operates. But Judge McClelland could then
25 ask questions, well, the rule says this. How --

1 What did you experience, or tell me more about
2 this rule. When it says that you can't buy
3 sweepstakes points and you said you did, explain
4 that to me. But Judge McClelland is denied that
5 opportunity because he doesn't even know rules
6 exist let alone what they say. We believe that's
7 a material omission.

8 Number nine, Officer Scharschmidt never
9 tells Judge McClelland that before a customer can
10 participate in this sweepstakes that they have to
11 accept the rules on the screen from the
12 sweepstakes computer device. He doesn't say that.

13 THE COURT: Is that like what
14 we see when we agree to, you know, use like, I
15 don't know, anybody's website, it has the internal
16 box that you have to proceed through and click?
17 Nobody ever reads that, right?

18 MR. MALARCIK: Judge, I doubt it.

19 THE COURT: Okay.

20 MR. MALARCIK: There is some case
21 law, however, that that is fair notice.

22 THE COURT: Okay. I mean, and
23 I'm familiar I think with some of the case law,
24 otherwise why would teams of lawyers create those
25 boxes that either have the yes check or no check.

1 I might add that the Court's website
2 actually has one of those boxes, and to get onto
3 the Court's website you have to click the yes box
4 after reading what is a mountain of disclaimer.
5 So I found that interesting because I just had to
6 do that not long ago.

7 MR. MALARCIK: I don't mean to
8 interrupt you, Your Honor. Now you know more
9 about that process than Judge McClelland did. You
10 were just able to ask me all those questions
11 because you're curious and you want to know, you
12 want to make the right decision. But if I don't
13 tell you that's part of the process, you're
14 deprived of that information, you can't answer the
15 questions, and you assume rightfully so that these
16 officers are being forthright, honest and telling
17 you everything you need to know to make a finding
18 of probable cause.

19 THE COURT: But my analysis of
20 probable cause might be completely different from
21 another judge's analysis of probable cause. What
22 my curiosity suggests doesn't necessarily mean
23 Judge McClelland's is different or perhaps could
24 be different. I'm just suggesting that this is a
25 unique circumstance we find ourselves in, and I

1 am, in fact, curious as to how the machine
2 operates since it's now my case, right?

3 MR. MALARCIK: It is. And I'm not
4 disparaging Judge McClelland's decision. I think
5 he had no other decision than to sign the warrant
6 given what that warrant said.

7 THE COURT: Okay.

8 MR. MALARCIK: But if you believe
9 we have set forth a prima facie case and we're
10 allowed to cross examine these officers, then your
11 job is, as you said, not to secondguess
12 Judge McClelland, your job is to look at these
13 items and say well, are those material omissions?
14 If they are, then I put them in the warrant. You
15 literally get the Etch A Sketch. You get to shake
16 that affidavit and take out everything you think
17 is misleading and write in all the stuff you think
18 is there, and then independently, as you do often,
19 look at this brand-new affidavit as it's written
20 and decide whether that affidavit amounts to
21 probable cause.

22 THE COURT: Well, what I can
23 see is that, you know, there is information. It
24 appears to indicate there was a waiver screen. So
25 are you suggesting that the waiver screen is

1 different from the disclosure?

2 MR. MALARCIK: Yes.

3 THE COURT: Are you using
4 semantics as well in this way?

5 MR. MALARCIK: I am.

6 THE COURT: So the waiver is
7 listed, but what you mean is the disclosure,
8 disclosure of what it is. But I think that the
9 officer's using -- I mean, I guess we would have
10 the waiver and disclosure screen is the same
11 thing, correct?

12 MR. MALARCIK: I assume the
13 officer -- Let me say this; I think what the
14 evidence is going to show you is that there is a
15 difference. Because what the evidence will show
16 you is that at the time that Officer Scharschmidt
17 writes his report on April 12th, 2012, he writes
18 his report and he says before I could participate
19 I had to read the official rules, he uses the
20 words official rules, and accept them before I
21 could participate. When it gets to the affidavit,
22 for some reason he doesn't call them official
23 rules anymore, he calls it a waiver. In my mind,
24 the waiver is different than rules. You sign
25 waivers when you go parachuting, bungee cording,

or you go to a baseball game and sit behind homeplate. Here's the risk, you waive it, now participate at your own peril. That's not what happens inside these stores. You're not proceeding at your own peril. You're being told what the rules are and you either accept them or you deny them. I think that's different.

THE COURT: Okay. Go ahead,
Mr. Malarcik. Anything else?

MR. MALARCIK: Your Honor, I think we have set forth enough to establish a prima facie case that there are reckless statements in the affidavit, that there are material omissions that if included in the affidavit would lead this reviewing court to make an independent determination that the affidavit does not support probable cause.

THE COURT: Thank you.

MR. MALARCIK: For those reasons we're asking the Court for the opportunity to cross examine both of these officers at this time. Thank you, Judge.

THE COURT: Thank you, very much.

I have reviewed the affidavits that were

1 presented in the form of the motions, and again,
2 based on the information and the arguments from
3 counsel, I am going to find that there is a prima
4 facie case to allow examination of the officers at
5 this time. So I'm going to have -- I'm going to
6 at this time allow -- Each one of you is going to
7 have a separate sort of person you're going to
8 examine.

9 Agent Boldin, you will be asked to come
10 back up to the stand. You know you are still
11 under oath.

12 AGENT BOLDIN: Yes, ma'am.

13 THE COURT: We'll limit it to
14 this area, to the area of the affidavit which has
15 been highlighted and we'll proceed from there. So
16 you will be questioned as if on cross examination
17 and then we will go on to Detective Scharschmidt.
18 Okay. Come on back up. Thank you.

19 Mr. Schamel, we'll probably take about a
20 10-minute break for restrooms at about 3:15.
21 We're going to go today until approximately 4:30,
22 ladies and gentlemen, so that's our time frame.
23 We're going to begin again tomorrow at
24 approximately 9:30, so everyone will sort of miss
25 traffic and have an opportunity to have some

1 coffee, and we're going to continue with this
2 hearing or these hearings through the day
3 tomorrow. We'll take a midmorning break, an hour
4 for lunch, and midafternoon break. We'll again
5 end at approximately 4:15/4:30. If we need to
6 proceed into Wednesday, we are available to do
7 that. Mr. May might need a few hours of break
8 tomorrow morning, so be prepared and not shocked
9 if I delay things for a few hours tomorrow morning
10 to accommodate everybody's schedules as I've
11 accommodated all the lawyers. So that's our time
12 frame for tomorrow so that everybody's on the same
13 page.

14 Mr. Schamel, go ahead.

15 MR. SCHAMEL: Thank you, Your
16 Honor. I understand the limitation Your Honor
17 just put on, but may I have the Court's grace for
18 a few minutes just background questions --

19 THE COURT: Absolutely.

20 MR. SCHAMEL: -- to make sure the
21 record's clear here what Agent Boldin's background
22 was at the time that he was doing this affidavit?

23 THE COURT: Absolutely, yes.
24
25

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2 CROSS-EXAMINATION OF ROBERT BOLDIN

3 BY MR. SCHAMEL:

4 Q. Good afternoon, Agent Boldin.

5 A. Good afternoon.

6 Q. Mark Schamel on behalf of VS2. Agent, I know we went
7 back through all this stuff in February. I would like to
8 walk through a little bit of it today. If I recall, you
9 are almost 20 years of law enforcement?

10 A. Correct.

11 Q. You're an agent with the Cleveland District Office
12 for the Ohio Department of Public Safety?

13 A. Ohio Investigative Unit, which is a Division of
14 Public Safety. Yes.

15 Q. Division of Public Safety. Okay. And if I remember
16 correctly, you have a college education?

17 A. No, sir.

18 Q. You do not. You do not have any education or
19 training in software engineering, do you?

20 A. No, sir.

21 Q. Do you have any education or training or prior work
22 experience in game regulation?

23 A. No, sir.

24 Q. Have you done anything in game regulation, it's all
25 been sort of straight law enforcement work?

1 A. Correct.

2 Q. The way I think you described it for Your Honor
3 earlier on Direct Examination is you do vice work, street
4 crime work?

5 A. Yes.

6 Q. Prostitution?

7 A. Not all street crime, but the variety of different
8 vice work, yes.

9 Q. Okay. So you don't have any training or experience
10 in electronic gaming devices or systems?

11 A. No certified training courses, no.

12 Q. You made a distinction of certified. What type of
13 uncertified do you have?

14 A. We've had -- When hired by the Ohio Department of
15 Public Safety we received training in gambling
16 enforcement. There's been a variety of legal update
17 courses and some field training related to gambling
18 enforcement in general.

19 Q. So going back 20 years, you've had on-the-job
20 training on the issues of gambling and gambling
21 enforcement?

22 A. The gambling was pretty specific when I became
23 employed with the Department of Public Safety, so the last
24 eight years.

25 Q. Do you remember who did that training for you, who

1 taught you those courses?

2 A. The majority of it was field training conducted by an
3 assistant agent-in-charge where I started, which was the
4 Cincinnati office. It was field training and on-the-job
5 training, if you will.

6 Q. Okay. Is it fair to say this on-the-job training you
7 received was training from other police officers, not from
8 experts in the field of gaming or gambling?

9 A. Right. That's why I tried to make the distinction
10 between certified and official courses.

11 Q. If we put sort of a finer point on it, you had some
12 more senior agents, the agent-in-charge, so somebody a
13 little more gray in their hair, they basically told you
14 how they did it; is that fair to say?

15 A. In essence, yes.

16 Q. So no slide shows, no presentations, no testing,
17 anything like that?

18 A. No, sir.

19 Q. You don't have any legal training, do you?

20 A. No, sir.

21 Q. Never had a paralegal certificate, law degree?

22 A. No, sir.

23 Q. Smart man.

24 THE COURT: I was going to say
25 lucky you.

1 Q. (BY MR. SCHAMEL) How about any expertise in the
2 classification of operational electronic gaming devices
3 and systems?

4 A. In the classification, no.

5 Q. Have you ever been taught anything in this on-the-job
6 training about classification of different types of
7 gambling operations?

8 A. We've certainly had training regarding the elements
9 required for various classifications.

10 Q. Okay. Of gambling?

11 A. Yes.

12 Q. And you've also had some training in the area of
13 sweepstakes, right?

14 A. Again, no official training courses. That's been
15 more research based.

16 Q. Do you have any -- Let me ask you this question on
17 research based then; do you do any independent research of
18 your own?

19 A. No, sir.

20 Q. Are you part of any organization or group in this
21 field?

22 A. No, sir.

23 Q. So you don't pay any dues or go to any conferences?

24 A. Correct.

25 Q. Have you ever done the training now that you've got

1 20 years in and you've got a couple gray hairs, are you
2 training younger officers and agents in this field?

3 A. Not in this particular field, no.

4 Q. So you've never done any presentations or anything of
5 that nature?

6 A. In this particular field, no, sir.

7 Q. And so I think it's fair to say based on all that,
8 you've never been qualified in any way as an expert, have
9 you?

10 A. No.

11 Q. In this field?

12 A. Correct.

13 Q. As the agent on this case, just so that we understand
14 and you can explain for Her Honor, are you the case lead
15 agent or is it the sergeant?

16 A. I was.

17 Q. So this is your case?

18 A. Joint investigation, but I was the lead agent on it,
19 yes.

20 Q. And so you did the field investigation of Mister B's
21 in Parma Heights; is that right?

22 A. Along with other agents, but yes.

23 Q. So when decisions were made about wearing a wire,
24 going in, taking undercover photographs, collecting
25 evidence, those were your decisions?

1 A. Mostly, yes.

2 Q. Did you consult with anybody before making those
3 determinations?

4 A. There was direction given by our command staff, you
5 know, our assistant in charge, agent-in-charge, within the
6 Investigative Unit.

7 Q. Did any of those individuals you identified by title,
8 not name, any of those individuals have any specialized
9 training, advanced degrees, anything of that nature?

10 A. Not that I am aware.

11 Q. You weren't really working with any experts in this
12 field?

13 A. We were consulting with experts in the field.

14 Q. What experts were you consulting with?

15 A. We had consulted with Deneen Hernandez with the FBI,
16 it's the Crime Analysis and Racketeering Records Unit.

17 Q. That's at Quantico?

18 A. Yes.

19 Q. Special Agent Hernandez is sitting in the back row?

20 A. Yes.

21 Q. You had been consulting with her back at the time you
22 had been running your investigation into Mister B's and
23 Goodtime Charlies; is that your testimony?

24 A. I don't know the date that we began to consult with
25 her, so I would be leery to put an exact date on that.

1 Q. That's a totally fair answer. I'm not trying to put
2 a date on it. I'm more concerned with a timeline. You
3 didn't go do your investigation then consult with her, did
4 you?

5 A. The investigation wasn't complete, but as we're
6 discussing the search warrants today I don't believe we
7 spoke to her before those search warrants were obtained.
8 I believe our first conversations and consultations were
9 after that fact.

10 Q. Okay. So you hadn't received any guidance from her
11 at the time that you drafted your search warrant or
12 affidavit?

13 A. Not that I recall, no.

14 Q. Had you received any guidance or oversight from
15 anybody before you drafted that search warrant application
16 and accompanying affidavit?

17 A. No, sir.

18 Q. Did you actually draft that affidavit and the -- Did
19 you actually draft the search warrant application and the
20 accompanying affidavit?

21 A. Yes, sir.

22 Q. You drafted that by yourself?

23 A. Yes, sir.

24 Q. Did you review it with anybody? Did you show it to
25 anybody before you submitted it?

1 A. It was reviewed by the Cuyahoga County Prosecutor's
2 Office. I believe it was Assistant Prosecutor Katie
3 Mullin that looked it over, but frankly, it was more for
4 format and structure than for actual content. So I don't
5 want to throw her under the bus on this. It was structure
6 and format more than it was actual content.

7 Q. Let's talk a little bit generally if we can about
8 these 20 years. How many times have you done warrant
9 applications?

10 A. Probably 100, more than 100.

11 Q. And every time you do a warrant application you do an
12 affidavit?

13 A. Yes.

14 Q. And so you understand what has to go into the
15 affidavit and what the requirements are?

16 A. Yes, sir.

17 Q. Have you ever had a warrant that was turned down?

18 A. I don't think one that I personally wrote. I know I
19 had been involved in one or two that had been turned down,
20 but I don't believe those were any of the times that I
21 drafted.

22 Q. So you weren't the affiant on those?

23 A. Correct.

24 Q. Now, you did -- Let me ask you to your best
25 recollection between the first of September of 2011 and

1 the 20th of January of 2012, nine site visits at
2 Mister B's in Parma Heights. Does that sound right?

3 A. I know that sounds right. I don't know if that's the
4 exact number. I would have to review some records, but
5 that sounds pretty accurate.

6 Q. During that same time period you did approximately
7 seven visits of Goodtime Charlies also in Parma Heights,
8 does that sound right?

9 A. Sounds correct.

10 Q. At the time you were doing this as the lead agent --
11 And the buck sort of stops with you for this
12 investigation, fair to say?

13 A. Depending on what aspect of it, but I would imagine
14 so.

15 Q. So if something needs to get done, either you have to
16 do it or you've got to find someone with less gray hair
17 and tell them to do it; fair to say?

18 A. Accurate.

19 Q. And you were aware, were you not, that at the time of
20 September to January 2012, September of 2011 to January of
21 2012, these approximately 16 visits to these two different
22 locations in Parma Heights, that Parma Heights had an
23 ordinance authorizing interactive entertainment in
24 computer sweepstakes devices?

25 A. Was aware they were in effect.

1 Q. I'm not trying to be cute. The way you answered that
2 question, you are aware?

3 A. Yes.

4 Q. At the time you drafted your warrant application with
5 your sworn affidavit were you aware then?

6 A. When I drafted the affidavit I was aware that the
7 Parma Heights City Ordinance existed, yes.

8 Q. At the time you investigated these businesses,
9 Goodtime Charlies, Mister B's, you're familiar with both
10 those locations, correct?

11 A. Yes.

12 Q. Just so we're clear, there are the two places that
13 you filed the applications with the Court with
14 Judge McClelland, and your affidavits, correct?

15 A. Correct.

16 Q. And at the time, September of 2011 to January of
17 2012, at the time that you were doing this you were aware
18 that both of them were licensed by Parma Heights to
19 operate interactive entertainment and computer sweepstakes
20 devices pursuant to the ordinance?

21 A. Pursuant to ordinance, they were authorized for that
22 activity.

23 Q. Were you aware that in June of 2010 that the Parma
24 Heights Planning Commission held a meeting where they
25 specifically discussed Goodtime Charlies and their

1 sweepstakes systems?

2 A. Yes, I was.

3 Q. You were aware of it?

4 A. I was aware.

5 Q. Again, I'm not trying to be cute. When I'm talking
6 about when you're aware, I'm only focused on what you knew
7 at the time you filled out the warrant application and
8 affidavit.

9 A. Yes. I learned of that prior to the application for
10 warrant.

11 Q. If I'm unartful, I mean at that time.

12 A. Sure.

13 Q. Aware there was a hearing and that actual application
14 had been discussed?

15 A. I was, yes.

16 Q. Did you interview any of the Board Members for that
17 hearing?

18 A. No, sir.

19 Q. Did you go and see if there were minutes from the
20 meeting?

21 A. No, sir.

22 Q. Did you do any investigation whatsoever to determine
23 what had happened at that June 9th, 2010 meeting when
24 Goodtime Charlies received that license?

25 A. We had come into possession of --

1 Q. Let me interrupt you and ask you for pronouns. When
2 you said "we."

3 A. The investigative team, so I'll say me to clarify.

4 Q. Okay.

5 A. I had come into possession of an agenda, so the
6 agenda laid out I believe the items that they were going
7 to discuss. So that I had seen, but did not see meeting
8 minutes or any product from the meeting.

9 Q. Okay. Did I miss it? Is it any place in your
10 affidavit that you laid any of this out for
11 Judge McClelland?

12 A. No, sir.

13 Q. Okay. Were you aware that license was later signed
14 by Mayor Michael Byrne?

15 A. Yes, sir.

16 Q. And you're aware, are you not, now, and you were
17 aware at the time of your affidavit, that there were no
18 concerns raised about Goodtime Charlies being an illegal
19 operation? Were you aware of that?

20 A. Concerns raised by who?

21 Q. Okay. Fair response. At the time that you were
22 putting together your affidavit, you had the knowledge of
23 that June meeting, you understood that Goodtime Charlies
24 had received that license, you were aware of what the
25 licensing procedure was?

1 A. Yes.

2 Q. Okay. When you were aware of all that, you had no
3 basis to believe that there had been any concerns raised
4 about Goodtime Charlies' use of the VS2 software as
5 somehow being illegal?

6 A. I don't know what other people's concerns were. I
7 don't think I can accurately answer that.

8 Q. Okay. Let's try a different way. You're the lead
9 agent, right?

10 A. Correct.

11 Q. So you sort of are impugned to know everything that
12 the rest of your investigative team knows, fair?

13 A. Fair enough.

14 Q. Your job as the affiant is to include that
15 information in the affidavit that you're swearing to to
16 give to the judge, correct?

17 A. Every piece of information?

18 Q. That's not what I said. What I'm saying is you're
19 supposed to know what the team knows and you're supposed
20 to put that together for the affidavit, correct?

21 A. Collectively for an affidavit, yes.

22 Q. Okay. And when you did that, you are telling us that
23 you had knowledge of what was going on with Goodtime
24 Charlies getting its license in Parma Heights, correct?

25 A. Correct.

1 Q. And what I'm asking you is in your investigation as
2 the lead agent did you have any evidence, had you been
3 told by anybody, had you even heard a rumor, that there
4 had been a problem with Goodtime Charlies when they went
5 in and they got their application approved and received
6 that license?

7 A. I was unaware of any problem.

8 Q. So to your knowledge, it sort of went through without
9 a hitch?

10 A. As far as I know. I mean, I never read anything to
11 the contrary.

12 Q. And you didn't put any of that in your affidavit?

13 A. No, sir.

14 Q. I take it you said you didn't interview the Parma
15 Heights Board, the Planning Commission. You didn't
16 interview the mayor, either, did you?

17 A. No, sir.

18 Q. Do you have at the time that you're working on the
19 affidavit sort of any internal knowledge -- excuse me --
20 any knowledge of internal workings of that process in
21 Parma Heights?

22 A. Yes.

23 Q. What did you know about it at that time?

24 A. The basics by which the application or the license
25 would be granted, as far as the request for an application

1 packet, and the completion of that packet.

2 Q. And it went through and came with an expert report;
3 is that right?

4 A. Required for the application?

5 Q. That particular application, it went in with an
6 application report, were you aware of that?

7 A. No, sir.

8 Q. Were you aware an expert report -- Do you know the
9 name Nick Farley?

10 A. Yes, sir.

11 Q. What do you know about Nick Farley?

12 A. I believe he's involved in the testing industry.

13 Q. He's one of -- You were here when Mr. Malarcik was
14 speaking to the judge earlier, correct? He runs one of
15 the three labs that's approved in Summit County; is that
16 right?

17 A. According to Mr. Malarcik, yeah. I can't testify to
18 that, but I certainly would believe him.

19 Q. Would you have any knowledge one way or another on
20 that?

21 A. No.

22 Q. Do you know anything about the Summit County program
23 on sweepstakes?

24 A. Very little.

25 Q. That wasn't part of your investigation to look into

1 what was going on, you were just doing Cuyahoga County?

2 A. Correct.

3 Q. And how about with House Bill 386, were you aware
4 that was pending?

5 A. Yes, sir.

6 Q. You read House Bill 386?

7 A. Yes, I've read it. I don't know that I could answer
8 all the questions about it.

9 Q. That's legislation. Not many people can.
10 But House Bill 386 dealt with exactly this type of
11 sweepstakes, did it not?

12 A. I don't know that I could say that it dealt exactly
13 with this, no.

14 Q. House Bill 386, is it your understanding that House
15 Bill 386, which was pending at the time you wrote your
16 affidavit, correct?

17 A. Yes.

18 Q. And you're aware it had been pending since back in
19 late 2011?

20 A. Correct.

21 Q. And you're aware that that House Bill dealt with the
22 issue of internet cafe sweepstakes, correct?

23 A. Yes.

24 Q. Okay. And it dealt with the question of a moratorium
25 to not allow any sweepstakes parlors to open?

1 A. Correct.

2 Q. And those that were open could remain open?

3 A. I don't believe that was the interpretation.

4 Q. Did -- You read it, right?

5 A. Yes.

6 Q. As part of your investigation you want to know what
7 is going on when you're doing this affidavit?

8 A. Certainly.

9 Q. You want to look into something, see if it is legal
10 or illegal, and what is coming down the pike?

11 A. Yes.

12 Q. When you read it it said if somebody had been shut
13 down by law enforcement they could reopen if they had been
14 opened when House Bill 386 was passed; is that right? You
15 don't know?

16 A. I recall similar language, but again, I don't know
17 that I can speak to specifics in the bill.

18 Q. Okay. Let's talk a little bit about some of the
19 stuff you did that went into the investigation that you
20 did in order to put together these affidavits. Okay?

21 A. Okay.

22 Q. When you went into either Mister B's or Goodtime
23 Charlies you went in, you didn't announce yourself as law
24 enforcement; is that right?

25 A. Correct.

1 Q. You went in undercover?

2 A. Correct.

3 Q. You've got to be a dumpster diver and undercover in
4 this case, correct?

5 A. Yes, sir.

6 Q. Okay. When you went in undercover you just play like
7 any other Joe that wants to go in and get on the internet
8 and possibly play the sweepstakes games to reveal if
9 you're a winner?

10 A. I don't think that's an accurate representation. No.

11 Q. You didn't go in as a regular person?

12 A. I went in as a regular person. I believe the
13 representation to get on the internet like everybody else
14 is inaccurate.

15 Q. That's your opinion. We'll get to that in a minute.
16 You went in just pretending like you were any other
17 person?

18 A. Correct.

19 Q. When you went in nobody hustled you in or out, you
20 didn't have any time limits, you didn't have any
21 limitations on access in any way different than any other
22 persons that were there?

23 A. No, sir.

24 Q. When you went in, you saw -- And let's talk about
25 Mister B's first. When you went in did you see the rules

1 posted?

2 A. I know I had seen them through the investigation. I
3 don't recall if I saw them that first visit. So yes, I
4 did see them through the course of the investigation.

5 Q. Okay. Now let's be clear. Did you see them at
6 Mister B's?

7 A. Yes.

8 Q. And did you see them at Goodtime Charlies?

9 A. Yes.

10 Q. Okay. And did you see that they were essentially the
11 same with the difference of the name of the operator?

12 A. From what I recall, yes.

13 Q. Okay. Did you see the sweepstakes odds at
14 Mister B's?

15 A. I don't recall seeing odds at either location.

16 Q. Do you recall seeing them at Goodtime Charlies?

17 A. No. I don't recall seeing them, the odds, at either
18 location.

19 Q. Okay. Do you recall when you went into either
20 Mister B's or Goodtime Charlies seeing information about
21 free plays?

22 A. Printed or subsequently on a device?

23 Q. Well, let's talk about printed first. Do you
24 remember seeing printed?

25 A. No.

1 Q. At either location?

2 A. I don't recall. Again, some of the printed material
3 was looked at over the course of the investigation, so
4 that first visit to both locations I don't recall having
5 an opportunity to see that.

6 Q. I'm not sure how we got down this road. I'm not
7 trying to focus you on your first visit.

8 A. You said the first time in.

9 Q. That's why I'm trying to clarify. You had the nine
10 visits we had to Mister B's, about the seven to Goodtime
11 Charlies. I'm asking you during the course of these
12 multiple visits over the course of a number of weeks; is
13 that correct?

14 A. Yes.

15 Q. Every single time you went in until you served the
16 warrant you in went in undercover?

17 A. That's correct.

18 Q. Every time you went in there you were there as long
19 as you wanted for purposes of your investigation, correct?

20 A. Yes.

21 Q. At no time you were in there did anybody ask you to
22 leave or do any of the things any other regular patrons
23 would not do, correct?

24 A. Correct.

25 Q. During those multiple visits to Mister B's or

1 Goodtime Charlies did you see in print form anything about
2 free plays?

3 A. Yes.

4 Q. Okay. And during those multiple visits to those two
5 locations did you ever talk to an employee or anybody who
6 is a representative of either place that told you about
7 the free plays?

8 A. I did not, but other investigators did.

9 Q. Okay. So that was known to you at the time of the
10 affidavit application; is that correct?

11 A. Yes, sir.

12 Q. Because it's fair to say you didn't do any additional
13 investigation in an undercover capacity after the
14 affidavit was filled out; is that right?

15 A. After the affidavit, no, sir.

16 Q. So we're really focusing on your investigation
17 preaffidavit. Okay. And you said that other members of
18 your investigative team were told by various employees or
19 an employee of some sort, which was it, Mister B's or
20 Goodtime Charlies?

21 A. Both.

22 Q. They were told about how to get free plays?

23 A. No, sir. They were told they couldn't have free
24 plays.

25 Q. They were told they couldn't have free plays?

1 A. Yes, sir.

2 Q. At both places?

3 A. At both places.

4 Q. Do you recall when you went in, and let's focus first
5 on Mister B's, and we're talking about all of your visits,
6 do you recall being required to, quote, accept the rules
7 electronically before you could play a sweepstakes game?

8 A. Yes.

9 Q. You were here when Your Honor and Mr. Malarcik had
10 that conversation about, you know, the clicking the box in
11 order to do that?

12 A. Yes, sir.

13 Q. And you had to do that in order to reveal whether or
14 not you were a sweepstakes winner, correct?

15 A. That was pass number one, that's correct.

16 Q. You also had to click in some form if you went to the
17 auto attendant; is that right? Let me back up with
18 another question. Did you ever use the auto attendant?

19 A. Yes, I did.

20 Q. There's also a live attendant?

21 A. Correct.

22 Q. Live attendant at point of sale, and the auto
23 attendant is more in the main facility?

24 A. Correct.

25 Q. When you were talking not -- When you were using the

1 auto attendant, that also requires you to click acceptance
2 of the rules. Do you remember that?

3 A. I don't believe the auto attendant at either location
4 had any requirement to do that particular function for a
5 user agreement or waiver.

6 Q. What was your understanding at the time you authored
7 the affidavit about the ability to obtain free plays, free
8 sweepstakes entries?

9 A. We had been denied and told we couldn't have it by
10 employees of both premises.

11 Q. So your testimony is that somebody in your
12 investigative team was told by some employee that there
13 was no free plays?

14 A. Correct.

15 Q. Did you ever -- You indicated you read the rules?

16 A. Yes.

17 Q. The rules talked about free plays, correct?

18 A. Yes.

19 Q. Did you ever send in a card and request free plays?

20 A. No, sir.

21 Q. So you don't know if free plays could be obtained
22 through the mail as laid out in the rules?

23 A. No, sir.

24 Q. You didn't even try?

25 A. No, sir.

1 Q. In your informal training and in your investigation
2 you are aware of the importance of free plays for a
3 sweepstakes, are you not?

4 A. Yes, sir.

5 Q. And so if you could get a free play, a free entry, I
6 misspoke, a free entry through the mail, does that change
7 your analysis to make this a sweepstakes?

8 A. No. I think the underlying issues with it based on
9 the other elements of it I don't think that the small
10 amount of free plays that were claimed, but not -- Again,
11 we're working off what we were told. However, should
12 those have been in there --

13 Q. No. That's not -- Agent Boldin, you're working off
14 all aspects of your investigation, are you not?

15 A. Yes.

16 Q. You're not just operating on what you're told, you're
17 operating on what your training is, you're operating on
18 what you saw, you're operating on what you read, you're
19 operating on what other people told you and you learned in
20 your investigation, are you not?

21 A. Yes, sir.

22 Q. You're not just on what you were told.

23 A. And I apologize. I didn't mean just off what we were
24 told. Operating that portion of it off what we were told.

25 Q. Okay.

1 A. So it would not change -- To answer the original
2 question, it would not change my assessments.

3 Q. You used the word elements. Your understanding on
4 the issue of elements -- Is it the element of chance or is
5 it the element of consideration, which are you referring
6 to?

7 A. Which particular part of it? If you're --

8 Q. It was your term. I'm trying to figure out what you
9 meant by --

10 A. To both of those. To the elements of consideration
11 and of chance.

12 Q. So it's your position as you sit here today under
13 oath that if free plays were awarded for zero
14 consideration that would not change your analysis about
15 whether this was a legal sweepstakes?

16 A. No, that's not what I'm saying. I would have to
17 re-evaluate the operation as a whole with that factor and
18 take another look at it. No, I don't think that by itself
19 in a vacuum could change an opinion.

20 Q. And just so we're clear here, you didn't try to get
21 the free plays? Somebody asked, you're not exactly sure
22 who?

23 A. I'm sure who.

24 Q. Who is that?

25 A. Agent John Phillips.

1 Q. That was on one occasion?

2 A. At each location, yes.

3 Q. One occasion, each location, Agent Phillips, and he
4 told you that?

5 A. Yes.

6 Q. You never did anything beyond that to inquire as the
7 lead agent yourself to anybody at Mister B's and Goodtime
8 Charlies?

9 A. That's right.

10 Q. You never tried to follow up by mail; is that right?

11 A. That's correct.

12 Q. Do you have any knowledge -- At the time that you did
13 your application, your affidavit and the warrant
14 application, did you have any knowledge about how the VS2
15 software worked at Mister B's and Goodtime Charlies?

16 A. The software itself?

17 Q. Yes.

18 A. No software knowledge.

19 Q. Had you received any type of training or insight by
20 Special Agent Hernandez or anybody give you good tips on
21 what to do with the software?

22 A. No, sir.

23 Q. Did you look at the software?

24 A. No, sir.

25 Q. Did you ever try to?

1 A. Prior to the affidavit?

2 Q. I know you have since. I'm talking about prior.

3 A. No, sir.

4 Q. Did you ever make inquiries of the owners of Mister
5 B's, Goodtime Charlies, or VS2 about this software?

6 A. No, sir.

7 Q. Are you aware or do you -- Did you know then that VS2
8 software could not work except with the availability of
9 free plays at Mister B's and Goodtime Charlies?

10 A. I think I need you to explain again, sir, before I
11 answer.

12 Q. Were you aware as part of your investigation that the
13 software from VS2 required Mister B's and Goodtime
14 Charlies as laid out in the rules posted both online and
15 in print at the store required to give free plays, were
16 you aware of that?

17 A. I don't think required would be accurate, because we
18 asked for it and were denied free plays. So I only
19 reconcile with them being required and with them actually
20 doing it.

21 Q. No. No. It's a cute answer, but what I'm getting at
22 here is you didn't do anything to look into the
23 relationship of VS2 and Goodtime Charlies, right?

24 A. What relationship?

25 Q. The relationship as it works with the software and

1 how it's supposed to operate.

2 A. No, we didn't review their relationship of the
3 software.

4 Q. And you weren't aware that that relationship required
5 as part of the VS2 software setup the provision of
6 sweepstakes, free sweepstakes entries?

7 A. I'm not aware of that relationship.

8 Q. All right. How much internet time did you purchase
9 during the visits to Mister B's, do you recall?

10 A. I don't recall a number of what was awarded. I don't
11 believe I would call it purchase.

12 Q. I'm sorry?

13 A. I don't believe I would call it purchase.

14 Q. You didn't purchase internet time?

15 A. I was awarded internet time. I wouldn't say that the
16 underlying operation was the purchase of internet time.

17 Q. I'm sorry, didn't you say you're not an expert?

18 A. Yes.

19 Q. I'm asking for what you saw. I'm not asking for your
20 opinion.

21 A. Okay.

22 Q. What I'm asking is when you went in and you talked to
23 somebody and you said I want to buy internet time, isn't
24 that what you asked for?

25 A. No, that's not how that conversation went.

1 Q. You didn't ask for internet time?

2 A. No.

3 Q. You asked for?

4 A. I asked him how this works, what do I do, I've never
5 done it before.

6 Q. You were told?

7 A. That conversation went okay, you get this card, you
8 load money onto the card, walked me over to a computer,
9 sat me down at the computer, told me to click past the
10 license agreement you said, or waiver, or whatever
11 semantics, and then told me to click on the sweepstakes
12 button because that's where you go to gamble.

13 Q. The word gamble?

14 A. She used the word gamble, yes, sir.

15 Q. Who was that person?

16 A. Was the employee of Goodtime Charlies, Ronnie.

17 Q. Ronnie?

18 A. Yes.

19 Q. The same at Mister B's?

20 A. Actually, the conversation at Mister B's was
21 different.

22 Q. How did that go?

23 A. That conversation was with Georgia Buresti, the
24 owner/operator of Mister B's, and that conversation was
25 similar in I said I wasn't aware how these things work,

1 how do I do this, similar conversation, the explanation of
2 loading money onto the card. However, when she walked me
3 over to the terminal she said that this is where the games
4 are, and then she said there's other stuff on here like
5 internet but I don't know why you would want to do that or
6 why anybody would want to do that. She directed me on the
7 game portion which is the sweepstakes tab but addressed
8 the other items on there.

9 Q. And did anybody ever tell you that you were buying
10 sweepstakes entries?

11 A. Did they ever use those specific words? No, sir.

12 Q. Did you ever read anything or see anything about
13 buying sweepstakes entries?

14 A. Not in those words, no, sir.

15 Q. How many times did you try to go on the internet with
16 the time you purchased?

17 A. How many times. I don't know. A few. I mean, we
18 explored the other --

19 Q. You use "we" again. I'm talking about you.

20 A. Personally, I did explore the other tabs on the
21 screen which included I think a word processor and some
22 internet functions.

23 Q. And did the word processor work?

24 A. You could type into it, yes.

25 Q. Okay. How about the internet, were you able to get

1 on the internet?

2 A. Yes.

3 Q. Did you go to internet sites?

4 A. Yes.

5 Q. Were you successful in accomplishing that?

6 A. Yes.

7 Q. When you did that was there a timer on that, do you
8 remember seeing a timer on the screen?

9 A. There was accumulative I think minutes available or
10 something to that effect.

11 Q. Those minutes available corresponded directly to the
12 amount of time you had purchased when you purchased the
13 time at point of sale; is that right?

14 A. Again, we're going to debate the semantics.

15 Q. No, we're not.

16 A. I wasn't purchasing time. I was following what they
17 had guided me to do.

18 Q. I'm going to ask you to answer my questions, not to
19 try to keep getting on your thing here. What I'm asking
20 you is when you went in you just told us a minute ago that
21 nobody ever said you could buy sweepstakes entries, right?

22 A. Correct.

23 Q. All the literature, everything that you saw,
24 everything that you learned in your investigation, that
25 was printed, part of the official way this internet cafe

1 worked were buying internet time, correct?

2 A. The printed material?

3 Q. Yes.

4 A. Yes.

5 Q. When you bought internet time, when you paid and you
6 received your card that you could swipe, that gave you
7 internet time, did it not?

8 A. There was internet time associated with it, correct.

9 Q. That internet time corresponded directly to the
10 amount of money that you had paid consistent with what was
11 put on the rules on the board; isn't that right?

12 A. Consistent with the printed rules, correct.

13 Q. That's what I'm trying to get at. Just took us a
14 little time.

15 When you did your affidavit and you filled that
16 out and you gave that to Judge McClelland, do you remember
17 putting in your affidavit that, quote, There was no offer
18 or explanation of a way to access the devices without
19 paying or obtain any alleged free sweepstakes entries?

20 A. Yes, sir.

21 Q. You put that in?

22 A. Yes, sir.

23 Q. Now, when you did the affidavit you had seen the
24 printed rules?

25 A. Yes.

1 Q. The printed rules clearly state how you could get
2 free sweepstakes entries, do they not?

3 A. Yes, sir.

4 Q. So when you said that to Judge McClelland that wasn't
5 accurate, was it?

6 A. In the affidavit that is in context to conversations
7 with employees.

8 Q. Oh, okay. I think you said employee, singular?

9 A. Well, I believe - and I don't have the warrant in
10 front of me - I believe when those statements are made in
11 the affidavit they are specific to the direct contact with
12 the various employees during various visits.

13 Q. And just so we're clear here for the record today, it
14 was one contact by one of your agents one time with one
15 employee over those 16 different visits to those two
16 locations; is that right?

17 A. There was one contact with one employee at each
18 location where they were specifically denied free entries.
19 But in the other references to it in the affidavit it's in
20 reference in those general contexts to each individual
21 visit.

22 Q. Okay. You say there's no offer or explanation,
23 right?

24 A. Yes.

25 Q. And you've indicated this other gentleman, this other

1 agent, one time at each location asked an employee once at
2 each location, right, how to get free entries, right?

3 A. Correct.

4 Q. There was no other inquiry that you or any of your
5 other agents made of anybody associated with Goodtime
6 Charlies or Mister B's as to how to obtain free entries;
7 isn't that right?

8 A. That's correct.

9 Q. All right. So let's focus on this. One time, one
10 person, asked one person at each location, correct?

11 A. Correct.

12 Q. So that's a total of two times, right?

13 A. That's correct.

14 Q. So there were no other requesting or no other
15 requests for explanations made at any time of anybody at
16 Mister B's or Goodtime Charlies, was there?

17 A. That is correct.

18 Q. Okay.

19 THE COURT: Let's take a
20 ten-minute recess and reconvene at 3:30. That way
21 everyone can use the restroom, get some coffee if
22 you need it, and continue until 4:30.

23 - - - o0o - - -

24 (Thereupon, a recess was had.)

25 - - - o0o - - -

1 MR. PITINNI: For purposes of
2 today, Chris Maggiore was here in the morning but
3 had to attend to some other matters so he left,
4 and the Court has waived his appearance for today.

5 THE COURT: Thanks, everybody.
6 I appreciate it. Okay. We are going to go back
7 on the record after our break, and I'm going to
8 let Mr. Schamel continue his cross examination of
9 Agent Boldin, if you would.

10 MR. SCHAMEL: Thank you, Your
11 Honor. Mark Schamel again for VS2.

12 Your Honor, I have marked and I will show
13 the government it's four different exhibits, but
14 they are actually made up by five pages. I'm
15 going to identify them as B -- C, D, E, and F. I
16 will hold Mr. Malarcik personally responsible for
17 calling this B. And E is E1 and E2.

18 Your Honor, may I approach?

19 THE COURT: You may.

20 MR. SCHAMEL: May I stand next to
21 the witness?

22 THE COURT: You may.

23 Q. (BY MR. SCHAMEL) I'll show you first what's been
24 marked as Defendant's C. Do you recognize that?

25 A. Yes, sir.

1 Q. And what do you recognize that to be?

2 A. It appears to be the rules or at least a portion of
3 the rules regarding the VS2 operation of Mister B's
4 Internet Cafe.

5 Q. Does that look like the screen shot you or one of the
6 members of your investigative team would have taken of the
7 undercover operation visits to Mister B's between
8 September of 2011 and January of 2012?

9 A. Screen shot from the system itself?

10 Q. Well, let me back up. When you went in undercover,
11 and I use like the My Cousin Vinny you guys, when you guys
12 went in there video was taken, right?

13 A. Yes, sir.

14 Q. Those video were given to Mr. May?

15 A. Yes, sir.

16 Q. Those videos were turned into still shots and given
17 to us?

18 A. I wasn't trying to parse it down that far. It does
19 appear to be a shot from those videos.

20 MR. SCHAMEL: That's C. I'd
21 offer that, Your Honor.

22 Q. (BY MR. SCHAMEL) I'll show you what's been marked as
23 Defendant's D as in David. Do you recognize that? I'll
24 give you a hint. It's a blowup of what you saw.

25 A. Appears to be a larger version of the small paper.

1 Q. Okay. Thank you.

2 MR. SCHAMEL: I move that, Your
3 Honor, to the extent, Your Honor, I don't know if
4 Your Honor wants that. I would represent to you
5 it's a duplicate of what you have in your hand as
6 C.

7 THE COURT: Okay.

8 Q. (BY MR. SCHAMEL) I will show you these next two
9 boards that have been marked as Defendant's E1 as in
10 Edward and E2. Take a moment to look at those two for
11 you. Do you recognize those? And I'll give you another
12 hint. They look to be a copy of the official sweepstakes
13 rules from Goodtime Charlies part of the search warrant
14 returned.

15 A. They would appear to be so, yes.

16 Q. You recognize those?

17 A. Yes, sir.

18 Q. Okay.

19 MR. SCHAMEL: Your Honor, I would
20 move these, if I could, E1 and E2. It's two
21 blowup boards. I'm happy to show Your Honor.

22 THE COURT: E1 and E2 are the
23 Official Sweepstakes Rules?

24 MR. SCHAMEL: From Goodtime
25 Charlies. They were attached to the motion that

1 was filed.

2 Q. (BY MR. SCHAMEL) If I could show you, Agent, Exhibit
3 F as in foxtrot. Take a minute to look at that.

4 A. Yes, sir.

5 Q. What do you recognize that to be?

6 A. That appears to be the sweepstakes rules that were
7 posted at Mister B's.

8 Q. Okay. So other than the terrible job Mr. Malarcik
9 did labeling these in chronological order, this would go
10 with Defendant's Exhibit C; is that right?

11 A. I believe so, although the numbering is --

12 Q. Besides the atrocious lettering from C to F, those
13 look like they go together for Mister B's?

14 A. Yes.

15 Q. Same screen shot taken in the undercover video and
16 into still shots and given from Mr. May?

17 A. Yes.

18 MR. SCHAMEL: With that, I would
19 move Exhibit F.

20 THE COURT: You may.

21 Q. (BY MR. SCHAMEL) Let me see if I could go back to
22 where we left off, Agent Boldin. Do you remember as part
23 of your affidavit of Mister B's to Judge McClelland making
24 representations that about, quote, There was no discussion
25 of any purchased network time or any other information

1 presented to Affiant regarding any ongoing alleged
2 sweepstakes. Do you recall making that statement in your
3 affidavit?

4 A. Yes, sir.

5 Q. Now, you remember making the statement. Just so
6 we're clear, you had already seen, right, the rules we
7 just saw as C and F that were entered into evidence?

8 A. Yes.

9 Q. And you had seen at Goodtime Charlies the Official
10 Sweepstakes Rules were posted on the wall marked as E1 and
11 E2?

12 A. Yes.

13 Q. You saw those and you made that statement; is that
14 right?

15 A. Yes, sir.

16 MR. SCHAMEL: What we just moved
17 into evidence is Mister B's, and I'm just going to
18 give if Your Honor wants to hold the original, if
19 I may approach again?

20 THE COURT: You may.

21 MR. SCHAMEL: An exact duplicate
22 was just entered as Defendant's Exhibit C, that's
23 the Mister B's Internet Cafe, the color screen
24 shot that Agent Boldin just identified.

25 Q. (BY MR. SCHAMEL) Do you recognize that?

1 A. Yes.

2 Q. Do you understand it says Mister B's Internet Cafe?

3 A. Yes.

4 Q. First line, larger font, in box, in all caps, red?

5 A. Yes.

6 Q. What does that say?

7 A. Purchase Network Access Time Here.

8 Q. What does the next thing say in all caps in black?

9 Not caps. Bold.

10 A. Network Access Time (NAT) = 25 cents per minute*.

11 Q. And so we're clear, in the entire document the only
12 lettering that's in red and it's in a box and it's in all
13 block letters is the Purchase Network Access Time Here; is
14 that right?

15 A. That's correct.

16 Q. This document is made from the undercover video that
17 you took as part of your investigation that gave rise to
18 your affidavit for an application for search warrant; is
19 that right?

20 A. That's correct.

21 Q. And that's the same affidavit -- Strike that.

22 MR. SCHAMEL: May I approach
23 again, Your Honor?

24 THE COURT: Yes.

25 Q. (BY MR. SCHAMEL) These are duplicate copies. You

1 may keep them if you want, take them home, show them to
2 your friends. These are E1 and E2 on the big boards in
3 front of me. I represent those are the smaller copies.

4 MR. SCHAMEL: Here's a duplicate
5 for Your Honor.

6 Q. (BY MR. SCHAMEL) E1 and E2, you recognize that?

7 A. Yes, sir.

8 Q. Now, let me ask you, what's the heading on this
9 document? Does it say Official Sweepstakes Rules?

10 A. Yes.

11 Q. This is from Goodtime Charlies; is that right?

12 A. Yes.

13 Q. This is what was on the wall of Goodtime Charlies
14 during your undercover visits?

15 A. Correct.

16 Q. This is something available and out in the open and
17 known to you before you did your application for search
18 warrant?

19 A. Yes.

20 Q. Before you did your affidavit you saw this?

21 A. Yes, sir.

22 Q. Okay. And it's listed there's two pages. Let's
23 start with number one. This would be the -- all bold, all
24 caps, number one, what does the first line say?

25 A. No Purchase Or Payment Of Any Kind Necessary To Enter

1 Or Win This Sweepstakes.

2 Q. Gottcha. Okay. That again is something that was
3 known to you before you went and saw Judge McClelland and
4 you said, and I quote, There was no discussion of any
5 purchased network time or any other information presented
6 to Affiant regarding any ongoing alleged sweepstakes; is
7 that right?

8 A. That's right.

9 Q. Okay. You still have E1 and E2 in front of you? Do
10 you see Paragraph 2, How To Enter?

11 A. E1 and E2, make sure, that's the two-page?

12 Q. Yes. Stick with this document for a minute if we
13 could, Agent Boldin. So No. 2 is How To Enter?

14 A. Yes, sir.

15 Q. And that's a paragraph about sweepstakes begins on
16 May 6th, 2010?

17 A. Correct.

18 Q. Okay. Do you see down, let's count lines together,
19 one, two, three, four, five, six, sixth line down and it
20 says -- the line that says "player terminal." Do you see
21 that?

22 A. Yes, sir.

23 Q. If you follow that all the way across the way it says
24 (2), and it's in bold, and where it says For free entry,
25 mail a 3 X 5 inch index card with your name, mailing

1 address, phone number and age to: Goodtime Charlies II,
2 6249 Pearl Road, Parma Heights, Ohio, 44130, along with a
3 self-addressed, stamped envelope (SASE), and your magnetic
4 stripe account card valid for four (4) sweepstakes entries
5 will be mailed to you within 14 business days of receipt.

6 Do you see that?

7 A. Yes.

8 Q. That was on the wall when you went to Goodtime
9 Charlies?

10 A. Yes.

11 Q. So we're clear, you never availed yourself of the
12 opportunity to mail that?

13 A. No, sir.

14 Q. When you went to see Judge McClelland you didn't show
15 him this attachment?

16 A. No, sir.

17 Q. There wasn't an attachment to any way, shape, or form
18 to your affidavit?

19 A. No, sir.

20 Q. What about our Exhibits F and C, screen shots for
21 Mister B's, did you show those to Judge McClelland?

22 A. No, sir.

23 Q. You see Paragraph 3, same document?

24 A. Yes.

25 Q. Eligibility. All right. Open to legal U.S.

1 residents who are 18 years and older. Is that what it
2 says?

3 A. Yes.

4 Q. That's what it said at the time you did your
5 affidavit?

6 A. Yes, sir.

7 Q. Then No. 4 talks about winner randomization,
8 potential winner notification and prize redemption. Do
9 you see that?

10 A. Yes.

11 Q. No. 5 and No. 6. When we talk about Goodtime
12 Charlies for No. 6, Goodtime Charlies II, 6249 Pearl Road,
13 that's where you went, right?

14 A. Yes.

15 Q. And did your undercovers?

16 A. That's correct.

17 Q. Warranties and disclaimers, No. 7, and you see the
18 General, 8.

19 Did you ever count how many times it says
20 sweepstakes in this document?

21 A. No, sir.

22 Q. A bunch of them, right?

23 A. Yes, sir.

24 Q. No. 9 about the warning, right, about any attempt by
25 an entrant or any other person to deliberately undermine

1 the legitimate operation of sweepstakes may be in
2 violation of criminal and civil laws. That was all up
3 there, right?

4 A. Yes, sir.

5 Q. And then No. 10 was the winners list?

6 A. Correct.

7 Q. Okay. In your investigation with the exception of
8 the one time, one of your people, one of the people from
9 your investigative team, went to one employee of Goodtime
10 Charlies and asked for a free entry, with the exception of
11 that one time, is there anything in any of this document
12 that you found to be untrue? There isn't, is there?

13 A. Anything in this document?

14 Q. Yes.

15 A. Yes, sir.

16 Q. There is?

17 A. Yes.

18 Q. Where?

19 A. The portion regarding -- I'll reference the item
20 number. Item No. 3, Eligibility.

21 Q. Okay. Which part of that?

22 A. Employees, its respective parents, subsidiaries, et
23 cetera, not being eligible would indicate to me that they
24 were not allowed to be engaged in game play or the use of
25 the terminals.

1 Q. Well, let's parse that out. So your position is that
2 in this entire document that was on the wall of Goodtime
3 Charlies that the paragraph that is not 100% accurate is
4 No. 3 because you think that employees and their family
5 members couldn't play the reveal on the sweepstakes, is
6 that your position?

7 A. That would be one position, yes.

8 Q. Other than that, you don't see anything on this
9 document that is problematic?

10 A. I see a number of things on this that are
11 problematic.

12 Q. Let's do it.

13 A. Should I go in order?

14 Q. Yes.

15 A. The document itself doesn't match information that
16 was available off the computer screen --

17 Q. Okay.

18 A. -- when you were obligated to accept any agreements
19 before you continued regarding sweepstakes dates. This
20 indicates begins May 6th, 2010. The dates on the computer
21 screen were different. So there's a discrepancy there.

22 Q. So we're clear, the dates of the computer screen
23 indicated a sweepstakes date range, and you're saying this
24 don't line up with this sweepstakes game?

25 A. Yes.

1 Q. You studied this pretty close?

2 A. Some.

3 Q. Is this before the affidavit or in preparation for
4 today?

5 A. I don't recall. I don't believe that we compared
6 specific wording of this document and the posted rules
7 until after items had been seized, so I would have to say
8 it would be after the affidavit.

9 Q. So after the affidavit you compared them. But you
10 were fully aware after the affidavit that there were both
11 on the computer screen and on the wall in Goodtime
12 Charlies there was a set of rules that you even had to
13 click through on the screen and auto attendant a set of
14 rules laying out what kind of sweepstakes this was,
15 correct?

16 A. There was a printed document on the wall and a
17 printed document or, you know, video representation of a
18 document, however you want to put it, on the computer
19 itself laying out various information.

20 Q. And with all of that, you didn't put any of that in
21 your affidavit, you didn't tell any of that to Judge
22 McClelland?

23 A. No, sir.

24 Q. Right. You left all that out?

25 A. That's correct, sir.

1 Q. Because you had made a determination based on the one
2 time that you had asked -- one of your people had asked
3 whether or not they could have a free entry, and what you
4 believed without your training, this was illegal, so you
5 didn't bother talking to Judge McClelland about this being
6 a sweepstakes at all, right?

7 A. We laid out what we had determined to be probable
8 cause for a search warrant.

9 Q. What you determined, right?

10 A. Yes, sir.

11 Q. Okay.

12 A. Sorry. Yes, sir, what I had determined.

13 Q. You indicated before we took a break that you had
14 done some reveals and other times you had actually done
15 some searching, some web surfing as it were?

16 A. Yes.

17 Q. Web surfing and dumpster diving, but we'll keep
18 semantics out of here. You indicated the timer would go
19 down while you were doing that web surfing, right?

20 A. Yes.

21 Q. Was there a timer when you were playing -- when you
22 were revealing your sweepstakes entries for the games?

23 A. No, sir.

24 Q. And so you don't know that you lost any time from
25 your ability to surf the internet while you were playing

1 the reveal games, did you?

2 A. Correct.

3 Q. Okay. So if you sat down at terminal, make one up,
4 Terminal 1, okay at Mister B's, and I'm terrible with
5 math, so you sat down at Terminal 1 at noon, you sat at
6 Terminal 1 at noon, you did a number of reveals for 15
7 minutes, right?

8 A. Okay.

9 Q. And during that 15 minutes when you sat down you had
10 30 minutes -- let's call it an hour, an hour of time on
11 that card, right?

12 A. Yes.

13 Q. So now you sat for 15 minutes and revealed the
14 sweepstakes, maybe had a cup of coffee, talked to the
15 other patrons. When you go on the internet you still have
16 an hour, did you not?

17 A. I believe so, yes.

18 Q. That hour would then start ticking down like one of
19 those James Bond villain bombs setting off your hour
20 countdown?

21 A. Right.

22 Q. Until you got off the internet, right?

23 A. Correct.

24 Q. Then you could leave, and you could come back in a
25 week, right, you could come back in and have the same

1 magnetic stripe card, right, you walk back over and let's
2 say you spent 10 minutes surfing the internet, now you're
3 down to 50 minutes when you left?

4 A. Okay.

5 Q. You come back a week later, you sit down, you don't
6 play a single game, you don't reveal a single sweepstakes
7 entry, you sit down and go straight to the internet, you
8 still have 50 minutes?

9 A. Correct.

10 Q. That doesn't go anyplace, you haven't lost any time?

11 A. Correct.

12 Q. You didn't tell that to Judge McClelland, either, did
13 you?

14 A. No, sir.

15 Q. Do you remember telling Judge McClelland in your
16 affidavit in Paragraph 16 that, There was no offer of
17 on-site free entries, no explanation of mail-in entries or
18 any discussion about another way to play other than
19 costing the player money, do you remember saying that?

20 A. Yes, sir.

21 Q. You said that with full knowledge of this document up
22 on the wall at Goodtime Charlies?

23 A. I said that with my specific --

24 Q. That's not my question. Listen to my question. He
25 gets a chance. You can talk to him in a minute. My

1 question is you wrote that paragraph with your own hands
2 or fingers on a keyboard with full knowledge of this
3 document that was on the wall at Goodtime Charlies, did
4 you not?

5 A. Being posted on the wall, yes, sir.

6 Q. That was my question. Thank you.

7 And just so that we're clear for Her Honor,
8 there's no place in either affidavit from Mister B's or
9 Goodtime Charlies that you ever lay out the ability
10 according to the posted rules to obtain a free mail-in
11 entry?

12 A. That's correct.

13 Q. You never let the judge know not only that they
14 existed but you hadn't tried, correct?

15 A. That's correct.

16 Q. You said something before we took the break, you
17 talked about semantics. You remember saying semantics?

18 A. I remember, so.

19 Q. There's a little bit more semantics between a waiver
20 and a disclaimer, isn't there?

21 A. I don't believe so.

22 Q. Have you ever been trained on what either one means
23 as part of your training?

24 A. No, sir.

25 Q. How about Special Agent Hernandez, she ever teach you

1 the difference between a waiver or disclaimer?

2 A. No, sir.

3 Q. Mr. May, he ever fill that out for you?

4 A. No, sir.

5 Q. You never did any independent research to what either
6 of those meant or verified with anybody before you swore
7 out an affidavit for Judge McClelland, did you?

8 A. To that specific word, no, sir.

9 Q. Okay. Did you ever look at the sweepstakes rules at
10 McDonald's?

11 A. I've seen them, yes.

12 Q. Did you read them?

13 A. I'm sure at some point.

14 Q. They look a lot like these at Goodtime Charlies,
15 don't they?

16 A. I don't know that I can make that comparison.

17 Q. Is it your position at the time you wrote your
18 affidavit that no free plays were available at either
19 Goodtime Charlies or Mister B's?

20 A. Available to anyone or available to me personally?

21 Q. I don't know. Let's talk about the process. You
22 wrote the affidavit, right?

23 A. Yes.

24 Q. You have an office I imagine with your job?

25 A. Yes.

1 Q. You have your own computer or laptop or something?

2 A. Yes, sir.

3 Q. And if I understand sort of how the world works, once
4 you get a little bit higher up and you're in charge of an
5 investigation you can pretty much do what you want to do
6 with some caveats, right?

7 A. Not in the State of Ohio, no.

8 Q. You should come to D.C. We let everybody do what
9 they want.

10 When you're filling out your affidavit you can
11 take as much time as you need, right? There's not a
12 stopwatch, there's no deadline which had to be filled out,
13 right?

14 A. No, sir.

15 Q. You could print it out, sleep on it, show it to one
16 of your colleagues, rewrite it?

17 A. Yes, sir.

18 Q. I'm asking you when you did that, when you went
19 through, that process, when you engaged in that process to
20 obtain a search warrant as part of your criminal
21 investigation, you knew how important that was, right?
22 You had been trained in law enforcement?

23 A. Yes.

24 Q. You said you had done over 100 affidavits?

25 A. Yes, sir.

1 Q. You have been involved in many, many. You have seen
2 others that weren't yours and people had been denied an
3 affidavit?

4 A. Yes.

5 Q. That's sort of a big deal to be denied on application
6 for a search warrant with a low standard like probable
7 cause?

8 A. Yes, sir.

9 Q. I'm asking you when you did that, did you say to the
10 judge there are no free plays available?

11 MR. MAY: Objection.

12 THE COURT: Overruled.

13 A. I don't recall telling him there are no free plays
14 available. I remember it being certainly discussed in the
15 search warrant, but I don't know that that specific
16 sentence was in there.

17 Q. (BY MR. SCHAMEL) Okay. But let me ask you this;
18 you'd have to say as you sit here today at a minimum,
19 right, you didn't do everything you needed to to ascertain
20 whether free plays were available?

21 A. I don't have to say that. There are always aspects
22 of any investigation that you can certainly revisit, but I
23 was satisfied when I wrote that search warrant.

24 Q. Is it fair to say, Agent, that you're really not
25 qualified to ascertain whether something is a sweepstakes

1 or is not a sweepstakes based on your own training and
2 experience?

3 MR. MAY: Objection.

4 THE COURT: Overruled.

5 A. Could you ask me again, please?

6 - - - o0 - - -

7 (Thereupon, question read
8 back by reporter.)

9 - - - o0o - - -

10 A. No, I don't think that's a fair representation.

11 Q. (BY MR. SCHAMEL) You don't. And how about schemes
12 of chance, games of chance, how much training have you
13 received on that?

14 A. It was covered in the basic police academy I had, and
15 to avoid rehashing, the same training we discussed
16 earlier.

17 Q. When were you in the police academy?

18 A. 1983.

19 Q. How long was it? Three months? Six weeks?

20 A. Six months.

21 Q. How much was spent on gambling, games of chance,
22 schemes of chance?

23 A. It was pretty basic.

24 Q. Pretty basic?

25 A. Yes.

1 Q. Okay. Do you remember telling the judge in Paragraph
2 6 of Mister B's affidavit that, The system was found to
3 contain numerous games and schemes of chance, including
4 several types of draw poker and various slot machines,
5 including standard 8-liner, 5 line 3 reel and 5 line 5
6 reel displays?

7 A. Yes, sir.

8 Q. You remember saying that?

9 A. Yes, sir.

10 Q. What is a game of chance or scheme of chance?

11 A. It's a game conducted in a manner in which the
12 participant does not control the outcome.

13 Q. For which?

14 A. Sorry?

15 Q. Is that game of chance or scheme of chance?

16 A. Certain games of chance are defined such as poker,
17 craps, or roulette. Certain schemes of chance also
18 defined, such as lotteries and whatnot.

19 Q. Is it your position every time you play poker you're
20 violating gambling laws?

21 A. Yes, sir.

22 Q. Would it matter if you're not playing for money?

23 A. No, sir, not in the State of Ohio.

24 Q. What's a wager?

25 A. Valuable consideration given in return for a chance.

1 Q. And it's your position that you were wagering what
2 when you did the reveal of the games at Mister B's or
3 Goodtime Charlies?

4 A. Valuable consideration.

5 Q. What?

6 A. Money.

7 Q. What money?

8 A. The money that I loaded onto the account.

9 Q. And just so we're clear, that's the same money that
10 it clearly says on the screen shot and the rules that you
11 spent to buy network time, right?

12 A. That it says on the screen shot, yes.

13 Q. So it says that, and just so we're clear, that unless
14 you used that network time it's still there?

15 A. The network time remained.

16 Q. Correct. So let me ask you this question; if I could
17 get Mr. JD May to wheel in all the stuff you seized from
18 Goodtime Charlies and we could fire it up right now, would
19 your network time still be on there if you had your little
20 magnetic swipe card?

21 A. I imagine it would be, yes.

22 Q. I imagine it would be, too.

23 MR. SCHAMEL: The Court's
24 indulgence one moment?

25 THE COURT: Absolutely.

1 Agent, could I ask you one question?

2 AGENT BOLDIN: Sure.

3 THE COURT: Mr. Schamel asked
4 you about just the idea of playing poker. And in
5 Ohio you're stating that, for example, if I played
6 poker with my grandma that that would somehow be
7 illegal?

8 AGENT BOLDIN: To clarify?

9 THE COURT: Yes.

10 AGENT BOLDIN: In a public place.

11 THE COURT: Okay.

12 AGENT BOLDIN: The public place is
13 the factor there that I probably should have
14 discussed and didn't.

15 THE COURT: Fair enough. If I
16 were in a restaurant and decided to play poker
17 with my grandma at the table, that would be
18 illegal in Ohio?

19 AGENT BOLDIN: Right.

20 THE COURT: Even if we were not
21 playing for money? However, if we were at the
22 kitchen table?

23 AGENT BOLDIN: Even if there was
24 no wager.

25 THE COURT: Correct. Okay.

1 Mr. Schamel.

2 MR. SCHAMEL: A couple

3 housekeeping questions.

4 Q. (BY MR. SCHAMEL) Did you execute the warrant return?

5 Did you go out and serve the warrant?

6 A. At which location?

7 Q. Mister B's.

8 A. No, sir.

9 Q. And Goodtime Charlies?

10 A. Yes, sir.

11 Q. Who served it at Mister B's?

12 A. We had a variety of other agents, but the agent that
13 handled that search warrant was John Phillips.

14 Q. That's the guy that asked the question about free
15 entries?

16 A. Yes.

17 Q. Okay. And is it fair to assume when Mr. Phillips
18 came back having served that warrant that, you as the lead
19 agent, he reported back to you what had been seized?

20 A. Yes.

21 Q. Were you aware of and had an opportunity to review
22 the inventory from Mister B's and Goodtime Charlies?

23 A. Yes.

24 Q. Okay. And in reviewing that -- And again, I would
25 show you the --

1 MR. SCHAMEL: May I approach,
2 Your Honor?

3 THE COURT: You may.

4 Q. (BY MR. SCHAMEL) This is a copy of that letter, C,
5 we moved into evidence. Do you see -- It's probably a
6 fancy word for it, there's writing over the writing. I
7 don't know what you call that underneath part. You see
8 the underneath part?

9 A. Yes, sir.

10 Q. What does that say?

11 A. On the left-hand side?

12 Q. Yes.

13 A. The underneath writing says VS2.

14 Q. Okay. What do you know VS2 to be?

15 A. VS2 is a gaming provider that distributes across the
16 State of Ohio various gaming platforms -- or that's not
17 the best word, a gaming platform.

18 Q. Did you come to be aware when you got the warrant
19 return from Goodtime Charlies and Mister B's that the
20 games, the reveal games software, on those computers to
21 whom it belonged?

22 A. The software itself? I don't know that we've
23 identified an actual owner of software on a specific
24 device.

25 Q. Okay. Your investigation revealed the games that you

1 were playing to reveal the sweepstakes entries those were
2 VS2 games, fair to say?

3 A. Yes.

4 Q. When you did the warrant return and you obtained
5 those computers on them, they were exactly as you had seen
6 them when you went and did your undercover, correct?

7 A. On?

8 Q. On those computers, what you seized is what you had
9 seen?

10 A. I apologize, I don't understand the question.

11 Q. I'm not sure how we're missing each other on this
12 one.

13 You said you did Mister B's?

14 A. Goodtime Charlies.

15 Q. Goodtime Charlies. So when you went to Goodtime
16 Charlies and you walked into the building, and you had
17 other agents with you and you had your warrant, right?

18 A. Yes.

19 Q. The computers were on?

20 A. Yes.

21 Q. When the computers were on they were running VS2
22 software; is that right?

23 A. Yes.

24 Q. Then you unplugged them, you took them with you?

25 A. Yes.

1 Q. And so on those computers and the servers and things
2 you took was VS2 software, correct?

3 A. I would assume so, yes.

4 Q. And when your colleague went to Mister B's and did
5 the same thing, he walked in and found VS2 software; is
6 that right?

7 A. It would have been the same, yes.

8 Q. Okay. That's what I was trying to get at.

9 MR. SCHAMEL: Your Honor, thank
10 you.

11 MR. MALARCIK: Judge, could we
12 approach for one second?

13 THE COURT: You may.

14 - - - o0o - - -

15 (Thereupon, a discussion was
16 had off the record.)

17 - - - o0o - - -

18 THE COURT: We are going to
19 break for the day. Agent Boldin, I'm going to ask
20 you to step down. You are free to go. I've not
21 made a determination of the prima facie evidence
22 that Mr. DeVan has presented to the Court. We
23 will do that tomorrow so I can review the Briefs.
24 We have been in VS2 land all day. Have a great
25 night. We'll see you at 9:30.

- - - o0o - - -

(Thereupon, proceedings were
adjourned to 2:00 p.m., on
Tuesday, December 11th, 2012, at
which time the following
proceedings were had:)

- - - o0o - - -

1 TUESDAY AFTERNOON SESSION

2 DECEMBER 11, 2012

3 PROCEEDINGS

4 - - - o0o - - -

5 CALABRESE, DEENA, J.: 563092, State of
6 Ohio vs. multiple Defendants, VS2 Worldwide
7 Communications, Mr. Cornick, Mr. Upchurch, P&E
8 Technologies, Martin Sarcyk, Union Vending, et al.

9 At this point all counsel are present.
10 Defendants are present. Mr. May and Agent Boldin
11 are present. Detective Scharschmidt is present
12 but out of the room at this time. We're ready to
13 proceed.

14 We left off yesterday evening with the
15 prospect that we were going to continue
16 questioning. And, Mr. Devan, I believe you were
17 at the podium and we had decided at that point to
18 consider -- or the Court had decided at that point
19 to consider your questioning of the agent as it
20 related to the Affidavit which was supplied in
21 your search warrant; is that correct?

22 MR. DeVAN: That is correct,
23 Your Honor.

24 THE COURT: Okay. And at that
25 point, Mr. Schamel, yourself on behalf of VS2, et

1 al., had stopped your questioning of Agent Boldin.
2 However, you made an additional request of the
3 Court this afternoon; is that correct?

4 MR. SCHAMEL: That's correct.

5 THE COURT: What is that
6 request?

7 MR. SCHAMEL: My request is to be
8 allowed the grace of the Court to reopen and ask a
9 short series of questions of the agent,
10 particularly to the events that would have him
11 arriving at court today at 2:00 when we were
12 scheduled for a 9:30 hearing.

13 THE COURT: Agent Boldin, I'll
14 ask you to come back on the stand. I know you've
15 been in a car the last few hours. I hope you did
16 have something to eat.

17 AGENT BOLDIN: I did. Thank you.

18 THE COURT: If you need
19 anything, water, let me know.

20 I will allow you, Mr. Schamel, to ask your
21 questions. I suspect --

22 Mr. May, is there any objection to that on
23 behalf of the State?

24 MR. MAY: Well, not yet
25 because I haven't heard his questions, Your Honor.

1 THE COURT: Fair enough.

2 MR. MAY: I do believe the
3 questions we were discussing previously all
4 related back to the affidavit --

5 THE COURT: Absolutely.

6 MR. MAY: -- from long, long
7 ago way before Agent Boldin had the amount of
8 knowledge that he now has.

9 THE COURT: And again, I don't
10 know what Mr. Schamel's questions are, either, so
11 I can't make any determination, but go ahead.

12 - - - o0o - - -

13 CONTINUED CROSS-EXAMINATION OF ROBERT BOLDIN

14 BY MR. SCHAMEL:

15 Q. Good afternoon, Agent Boldin.

16 A. Good afternoon.

17 Q. For purposes of the record, it's about 2:20 in the
18 afternoon. I would like to ask where you were this
19 morning.

20 A. I was at the Ohio Senate.

21 Q. What were you doing?

22 A. Testifying in front of the Senate Committee.

23 Q. Were you testifying at the request of someone?

24 A. Yes.

25 Q. By whom?

1 A. The request came from Assistant County Prosecutor
2 JD May.

3 Q. When did you learn of that request?

4 A. Yesterday afternoon.

5 Q. About what time?

6 A. Towards the end of our proceedings here, so I don't
7 know. 5:00, 5:30.

8 Q. You said you were testifying. In what capacity were
9 you testifying? As an expert?

10 A. No, sir.

11 Q. What were you testifying to?

12 A. The pending legislation regarding House Bill 605.

13 Q. How did your testimony play into that? What
14 particular area of testimony did you offer?

15 A. Regarding investigations that our agency had
16 conducted.

17 Q. You talked about this investigation?

18 A. There were portions of it that related to this
19 investigation, yes.

20 Q. So portions of your testimony this afternoon in the
21 court -- in the Legislature in Columbus had to do with
22 this case; is that correct?

23 A. Yes.

24 Q. Were you under subpoena or volunteer?

25 A. I received no subpoena.

1 Q. Okay. Did any of your supervisors or any of your
2 officials in your organization order you to attend that?

3 A. Yes. They were all involved.

4 Q. That would be the answer to the question were they
5 involved. My question was did they order you?

6 A. I was never told you are hereby ordered to appear,
7 but when the request was received it was forwarded to my
8 immediate supervisor who then went up several levels of
9 the chain of command and I was then told to appear in
10 Columbus.

11 Q. How did you get to this hearing?

12 A. I'm sorry? I drove.

13 Q. With whom did you drive?

14 A. Prosecutor JD May.

15 Q. With whom did you return?

16 A. Prosecutor May.

17 Q. And did you have any discussions about this case
18 during that drive?

19 A. About this case?

20 Q. Uh-huh. About this investigation, about your
21 proposed testimony on the way down, or your testimony on
22 the way back.

23 A. Not that I recall.

24 Q. So you didn't discuss this in any way, shape, or
25 form?

1 A. Did we discuss it or discuss testimony?

2 Q. Did you discuss this case?

3 A. We discussed generalities of these cases, yes.

4 Q. Such as?

5 A. I don't know that we discussed a specific item. We
6 discussed some procedural items regarding these hearings,
7 the additional motions, what my role would be in
8 additional motions.

9 Q. By "motions" you mean motions that were filed by the
10 defense in this case?

11 A. I believe so, yes.

12 Q. And maybe you would be testifying, and something you
13 will be testifying to in regard to some of those other
14 motions?

15 A. No. More inquiries on my part just trying to
16 understand the nature of the motions and the process and
17 how they applied.

18 Q. Was there anybody else in the car with you and
19 Mr. May during your trip down and trip back?

20 A. No, sir.

21 Q. You've testified in court before, right?

22 A. Yes, sir.

23 Q. Okay. And you understand the rule what that means
24 about when you're under oath, you understand that you're
25 under oath until the judge tells you you're done

1 testifying you're still a witness?

2 A. Yes, sir.

3 Q. Okay. What time did you leave this morning?

4 A. I left my residence about 5:45.

5 Q. What time did you pick up Mr. May?

6 A. About 6:25.

7 Q. What time did you arrive in Columbus?

8 A. Shortly after 8:30.

9 Q. What time did you testify?

10 A. I believe it was just after 11:00 or right about

11 11:00.

12 Q. Before or after Mr. May?

13 A. Before.

14 Q. Did he see your testimony?

15 A. I would assume so, but I don't know where he was at.

16 Q. You couldn't see him in the room. Did you see his

17 testimony?

18 A. Yes, sir.

19 Q. What time were you both done with your testimony?

20 A. Close to 11:20.

21 Q. What time did you arrive back here in Cuyahoga County
22 to the Courthouse?

23 A. Approximately 1:45.

24 MR. SCHAMEL: Court's indulgence?

25 Your Honor, those are the questions I have

1 for Officer Boldin.

2 I would like, if I may for purposes of the
3 record, to be able to make my record on this
4 issue.

5 THE COURT: Absolutely.

6 MR. SCHAMEL: I've got some
7 problems about what happened here this morning,
8 and I understand what Your Honor's position is and
9 the last thing I'm trying to do is be that guy.
10 But I've got some real concerns, and I think that
11 Mr. May needs to make some proffers. I can tell
12 you I'm giving very serious consideration to I'll
13 be filing a request to the Court for legal fees
14 for this morning for myself and my two colleagues
15 on behalf of my clients.

16 And I also have a real problem with the
17 fact that I have a 20-year veteran police officer
18 who understands the rules as a witness and he was
19 in an automobile with the detective -- excuse me,
20 with the prosecutor on this case, took a two plus
21 hour drive to Columbus, testified in some way
22 related to this case, a two plus hour drive back
23 with that same prosecutor and had some sort of
24 discussion on this case. And I think that's
25 entirely inappropriate. I think there's a problem

1 with an Officer of the Court testifying in a
2 proceeding when we have pending cases going on.
3 Moreover, we're all sitting around here waiting
4 while he has our witness down there that he asked
5 to bring.

6 No notice was made to us. We've been
7 communicating with Mr. May since February by
8 e-mail and cell phone. I've talked to him when
9 he's been in Massachusetts. He's talked to me
10 when I've been in various states for other cases.

11 If I make a motion for legal fees, I have
12 an obligation to do something ethically, I would
13 like to make a record of Mr. May, allow me to
14 question Mr. May or give Mr. May an opportunity to
15 proffer when he knew it, how he knew it, and how
16 this came to be.

17 THE COURT: Could I see counsel
18 at sidebar, please?

19 - - - o0o - - -

20 (Thereupon, a discussion was
21 had off the record.)

22 - - - o0o - - -

23 THE COURT: For the record,
24 we're going to take about a 10-minute break.
25 Agent Boldin, you can step down. You are still

1 under oath. Thank you.

2 MR. DeVAN: Your Honor, out of
3 an abundance of caution, could Agent Boldin be
4 warned not to discuss this with anyone or talk to
5 anyone?

6 THE COURT: No. He's an agent.
7 He understands the circumstances of that
8 violation.

9 - - - o0o - - -

10 (Thereupon, a recess was had.)

11 - - - o0o - - -

12 THE COURT: This is Case No.
13 563092 captioned State of Ohio vs. Philip Cornick,
14 Richard Upchurch, VS2 Worldwide Communications,
15 P&E Technologies, Martin Sarcyk, Union Vending, et
16 al. All defense counsel are back and present in
17 the courtroom. On behalf of the State of Ohio at
18 this time Mr. Paul Soucie and Matt Meyer. Mr. May
19 is separated and he's not present in the courtroom
20 at this time. As well, Agent Boldin is also
21 separated from Mr. May and he's not present in the
22 courtroom at this time.

23 At this point we have taken what is
24 approximately a one-hour recess to deal with the
25 issue that presented itself upon Agent Boldin's

1 testimony in the fact that this morning the Court
2 late yesterday afternoon was notified by Mr. May
3 that he may be in attendance at a Senate Hearing
4 on House Bill 605 this morning and indicated that
5 he may be back to this court by lunchtime and
6 requested some additional time, although he was
7 unclear whether or not he would be called to
8 testify. So from that moment until approximately
9 8:30 this morning when I was notified by my
10 bailiff that Mr. May was, in fact, in Columbus
11 testifying on the issue of House Bill 605 before
12 the Senate, we as a collective group, attorneys
13 and myself, have been waiting for Mr. May to
14 return back to this courtroom. All of the lawyers
15 and all of their clients were present. We waited
16 until approximately 1:45, and we were back on the
17 record at 2:00 wherein I allowed for additional
18 cross examination of Agent Boldin.

19 And so at this point based on the
20 examination of Agent Boldin and what his answers
21 revealed; number one, that he, in fact, was with
22 Mr. May and drove down to Columbus with Mr. May;
23 and number two, that they testified before the
24 Senate together and in each other's presence; and
25 number three, they drove back to Cleveland

1 together in the car and that they, according to
2 Agent Boldin, spoke about the case - and we
3 certainly have not gotten into what that means at
4 this point - the issue -- we have several issues
5 pending before us, one of which is the possibility
6 Mr. May has made himself a witness in this case.
7 And so as a result, I have requested Briefs on
8 that particular issue. And in the abundance of
9 caution, I have requested Mr. Soucie and Mr. Meyer
10 participate in the remainder of this hearing and
11 the remaining cross examination of Agent Boldin by
12 defense counsel, et al., although, Mr. Schamel,
13 you are going to take the lead on the conclusion
14 of your examination of Agent Boldin; is that
15 correct?

16 MR. SCHAMEL: It is, Your Honor.

17 THE COURT: Mr. DeVan, I know
18 we were in the midst of your remaining issues, and
19 until I have some additional guidance as it
20 relates to the ethical and/or the prosecution
21 witness issue, I'm going to put your issue --
22 we're going to table your issue for now, and we
23 will set a briefing schedule for the issue as it
24 relates to Mr. May becoming a witness in this
25 prosecution.

1 Mr. Meyer, did you want to supplement the
2 record?

3 MR. MEYER: Your Honor, if I
4 might, I have a request.

5 THE COURT: Absolutely.

6 MR. MEYER: Mr. Soucie and I
7 are coming to this somewhat late in this hearing
8 and our disadvantage without the institutional
9 memory and history that Mr. May had and was
10 relying on, and so I would ask that you limit this
11 cross examination to the issue of whether or not
12 any violation of a separation of witnesses order
13 influenced the agent in his testimony; and
14 therefore, Mr. Soucie and I will be prepared to
15 deal with that issue. We are not prepared to deal
16 with all of the issues relating to the case that
17 are surrounding this hearing.

18 THE COURT: Absolutely. And,
19 in fact, that was going to be my directive, so I
20 think Mr. Schamel knows that's what his cross
21 examination will be limited to and I think that's
22 what he wanted to get into at this point. And so
23 that's what the examination will be limited to.

24 The agent, of course, is waiting outside
25 of the courtroom at this point, and I will recall

1 him to take the witness stand.

2 It is also my intention once we conclude
3 with these hearings to let everybody go at this
4 point and we will reconvene the schedule as it
5 relates to the briefing of the issues that have
6 now presented themselves to us as well as any
7 pending motions that I suspect everybody would
8 like to file on behalf of both defense and the
9 State of Ohio and we will proceed from there.

10 I am, however, going to order that
11 Agent Boldin and Mr. May not speak about their
12 testimony with anybody, themselves included, and
13 only with their counsel at this point. So they
14 will be -- that will be the order of the Court.
15 Once they are returned to the courtroom I will
16 inform them of that order. And I think that
17 concludes about in summary what has occurred for
18 this day's time frame.

19 Anything you wanted to supplement,
20 Mr. Schamel?

21 MR. SCHAMEL: If I may, Your
22 Honor?

23 THE COURT: You may.

24 MR. SCHAMEL: Mark Schamel on
25 behalf of VS2 and those Defendants.

1 Your Honor, I would just like for purposes
2 of the record to indicate that it's 4:00. I'm
3 sure Madam Court Reporter has that?

4 THE COURT: Yes.

5 MR. SCHAMEL: Also, to indicate
6 that we've addressed the issue of the presence of
7 Agent Phillips who is also in the courtroom --

8 THE COURT: Correct.

9 MR. SCHAMEL: -- and is remaining
10 in the courtroom because of the request of the
11 government, and that Special Agent
12 Deneen Hernandez is also in the courtroom without
13 objection - sorry if I'm mispronouncing it -
14 without objection from the defense.

15 THE COURT: Do you have an
16 objection to Agent Phillips remaining in the
17 courtroom?

18 MR. SCHAMEL: Standing here, I
19 think it's difficult to articulate what my
20 objection is. I'm not making allegations that
21 he's trying to fix anything. We're in uncharted
22 territory. The safe play is he's out.

23 THE COURT: Agent Phillips, I
24 would caution you in abundance of caution you
25 should step out for the remaining hearing in case

1 the government's interest needs to be protected in
2 the future of this prosecution and whatever
3 happens that you remain neutral and are able to
4 come to these hearings with a clean and neutral
5 idea.

6 And, Special Agent, you're welcome to
7 remain. You're an expert witness in this case. I
8 don't think there are any other issues.

9 Agent Phillips is going to step out at
10 this time.

11 MR. MEYER: Your Honor, I would
12 also note for the record that the prosecution
13 routinely has investigators associated with the
14 case sitting at counsel table.

15 THE COURT: Correct.

16 MR. MEYER: Mr. Soucie and I
17 are not going to make an issue of this today, but
18 I think the Court has the discretion to allow the
19 agent to remain.

20 THE COURT: I completely agree
21 with you. I think this is just in the abundance
22 of caution. Honestly, Mr. Meyer, not having the
23 full scope of this investigation and case in front
24 of you at this time, this is probably the smartest
25 decision so that it protects the interest of

1 whatever the government's case remains and how you
2 intend to proceed, and so it allows that
3 insulation for the government as well.

4 MR. SCHAMEL: I think that's
5 right, Your Honor.

6 THE COURT: Okay. Joe, get our
7 agent, please.

8 MR. SCHAMEL: Your Honor, so I
9 understand for housekeeping, our plan is 6:00?

10 THE COURT: Our plan is 6:00.

11 MR. SCHAMEL: I don't anticipate
12 I'll take that long.

13 THE COURT: 6:00 is our time
14 frame. I can't imagine that you would need two
15 hours.

16 MR. SCHAMEL: Although, Angela
17 did request I talk a lot slower.

18 THE COURT: So, for the record,
19 Agent Boldin is back on the witness stand. He
20 remains under oath during the course of these
21 proceedings.

22 At this point, Agent Boldin, Mr. Schamel
23 is going to continue cross examination as it
24 relates to the events of today. So you know that
25 Mr. Soucie and Mr. Meyer are here on behalf of the

1 State of Ohio at this point. They will be making
2 any objections. Mr. Schamel will begin his cross
3 examination. All right?

4 AGENT BOLDIN: Okay.

5 THE COURT: Thank you.

6 AGENT BOLDIN: If I may, Your
7 Honor?

8 THE COURT: You may.

9 Q. (BY MR. SCHAMEL) Good afternoon again, Agent.

10 A. Afternoon.

11 Q. We're going to talk in a little more detail about
12 some of the things we were talking about just before we
13 took that hour break. Okay?

14 A. Okay.

15 Q. In particular, we're focused on a very important
16 issue, and it's really the trip to Ohio -- We're all in
17 Ohio. The trip to Columbus.

18 A. Okay.

19 Q. I think of this as my trip to Ohio. This is the
20 Columbus trip.

21 With regard to the testimony that you gave today
22 in Columbus, the travel arrangements, things of that
23 nature, do you have - and when I say "have" I don't mean
24 right now on your person - but do they exist, any notes,
25 or e-mails, or anything related to any aspect of that

1 travel down to Columbus and back?

2 A. Yes.

3 Q. Okay. What do you have?

4 A. I have an e-mail copied of the agenda indicating the
5 address and the time for the hearing, and then I have the
6 notes that I prepared that were sent through my chain of
7 command via e-mail as well.

8 Q. Did you have any text messages from anybody about
9 going down to Columbus? While you're thinking of that,
10 are you married?

11 A. Yes.

12 Q. Okay. I am not asking you in any of these questions
13 if you called your wife, none of that. Okay?

14 A. Right.

15 Q. Other than your wife, do you have any text messages
16 from anybody about the arrangements, what you'll testify
17 to, about being invited, the waterfront, anything?

18 A. I don't recall any texts outside of the family, but I
19 don't know that I can say that definitively but I don't
20 recall sending any texts.

21 Q. How about e-mails other than the ones you identified
22 already, any e-mails, for example, with Mr. May, let's go,
23 where should I meet you, anything like that?

24 A. There was with the agenda I believe I e-mailed him
25 back the address of where we would meet this morning.

1 Q. Where you would meet?

2 A. Yes.

3 Q. Okay. And how about telephone calls, did you have
4 any telephone calls with Mr. May or anyone else other than
5 your wife about attending the hearing today?

6 A. There would have been two telephone calls. One would
7 have been last night to let him know that.

8 Q. If I may, by "him" you mean Mr. May?

9 A. Mr. May, yes.

10 Q. Thank you.

11 A. To let him know that I had spoken with my chain of
12 command and they directed me to go to Columbus today.

13 Q. Okay.

14 A. There would have been a telephone call this morning
15 close to our meeting time.

16 Q. To coordinate?

17 A. To coordinate.

18 Q. About what time was the call last night?

19 A. I would say probably 6:30.

20 Q. Okay.

21 A. p.m.

22 Q. That phone call this morning?

23 A. 6:20 or so a.m., 6:15.

24 Q. And other than those couple e-mails you just
25 identified and the telephone calls you just identified,

1 are there any other calls, texts, e-mails, having to do
2 with this testimony from anybody else?

3 A. I don't recall any, no. I don't believe there were.

4 Q. Okay. How about any notes? Did anybody -- When you
5 were in court yesterday -- Let me ask you this; you said
6 it was about 5:30 when Mr. May mentioned to you about
7 going to Columbus?

8 A. Roughly.

9 Q. 5:30 yesterday at the conclusion of the hearing?

10 A. Correct. After these hearings.

11 Q. Did he give you anything or did anybody give you
12 anything in writing here's what I want you to do, here's
13 where you should be, or was it all oral?

14 A. It was all oral.

15 Q. Other than Mr. May, was there anybody in the
16 Prosecutor's Office you talked to about this case?

17 A. No, sir.

18 Q. And I misspoke. I should have said about this trip.
19 And in your chain of command, you identified -- you said
20 that a couple times. Who in your chain of command did you
21 talk to about making this trip?

22 A. I had conversations yesterday with Agent-In-Charge
23 Greg Croft of the Cleveland District Office.

24 Q. Okay.

25 A. I had conversations this morning with Deputy Director

1 Dan Cline, Executive Director Robert Booker, the Director
2 of Public Safety Thomas Charles.

3 Q. These are in-person conversations?

4 A. Correct.

5 Q. Where did they occur?

6 A. The conversation with Cline, Booker, and Charles were
7 all at the Statehouse this morning.

8 Q. They were there as well?

9 A. Yes.

10 Q. Okay. And Mr. Croft, you talked to him last evening?

11 A. Yes.

12 Q. You talked to him in person?

13 A. I telephoned him.

14 Q. Okay. So as we're going through this, if you think
15 of anybody else as we're doing it, please identify if it
16 is by telephone or e-mail, things of that nature.

17 A. Okay.

18 Q. And if I understand this correctly, Mr. May
19 approached you about testifying in Columbus; is that
20 right?

21 A. Yes.

22 Q. Is that the first you heard about testifying?

23 A. There was -- There was mention of the hearings I
24 believe on Friday, but yesterday would have been the first
25 time there was any discussion about my testimony.

1 Q. And who mentioned this?

2 A. Mr. May.

3 Q. Mr. May on Friday about the hearings?

4 A. Yes.

5 Q. And what did he tell you about the hearings on
6 Friday?

7 A. Just that there was going to be one.

8 Q. Okay. And did he indicate whether or not he would be
9 testifying?

10 A. I don't recall him saying that.

11 Q. What did he tell you about the hearing? What do you
12 recall?

13 A. Just as it was going to occur as we were discussing I
14 guess the schedule of the legislation.

15 Q. You and Mr. May were discussing the legislative
16 schedule and he said there would be hearings on House Bill
17 605?

18 A. Correct.

19 Q. The next conversation you had with anybody about that
20 was on Monday with Mr. May?

21 A. Correct.

22 Q. Could you, to the best of your recollection, tell the
23 Court what was discussed last evening at 5:30 when Mr. May
24 approached you.

25 A. He had mentioned that - I don't know if I'm going to

1 get the wording right - but he was going to be testifying.

2 I don't remember how or why that came about --

3 Q. Okay.

4 A. -- but that he was going to be testifying, that I was
5 requested to testify as well.

6 Q. Okay. And I apologize because you're actually doing
7 what cops are supposed to do, and you're giving sort of
8 like a probable cause-type answer at a preliminary
9 hearing. What I'm trying to find out is to the best of
10 your recollection the exact words as best as you can
11 recall about what he told you as opposed to you said well,
12 he was talking to me about this or about this. What did
13 he say?

14 A. I don't know that I can quote him.

15 Q. To the best of your ability.

16 A. I believe it went along the lines of your presence is
17 requested as well.

18 Q. He said that?

19 A. I believe so. If you know Mr. May, you know that's
20 not outside of his vernacular.

21 Q. That's kind of quirky.

22 How did you respond?

23 A. I told him that I would need to discuss anything like
24 that with my chain of command.

25 Q. Okay. Were you interested in doing that? Not

1 talking to the chain of command, but actually testifying.

2 A. Interested?

3 Q. Yes.

4 A. I don't know if interested is the right word.

5 Q. What is?

6 A. If it was decided by everyone else that's responsible
7 for those decisions that I should be there today, then
8 that's where I would be. Only interested in that if I was
9 told to go do it I would go do it.

10 Q. And decided by everybody. Whose the everybody?

11 A. My chain of command.

12 Q. Okay. So did you take it to your chain of command to
13 request permission, or did you take it to your chain of
14 command to ask them if you should do it, or sort of can I
15 do it versus should I do it? How did you go to them? And
16 in particular, I guess we're talking about Greg Croft?

17 A. Right. With Mr. Croft I told him that I had been
18 requested, and quite frankly in a somewhat joking manner
19 said, Of course that's a decision that is not mine to make
20 so you're the first phone call I made.

21 Q. What did Mr. May tell you you were going to testify
22 about?

23 A. And I don't know if it was after the first mention or
24 second, so I would be leery to say exactly when that
25 occurred, but it was still within that short period of

1 time that he said --

2 Q. Okay. I apologize. Let me interrupt. You lost me a
3 little bit. About 5:30 he says to you your presence is
4 requested?

5 A. Right.

6 Q. Did you have a second follow-up conversation with him
7 in person yesterday?

8 A. We were all still in the hallway.

9 Q. You talked to him, called your boss certainly, and
10 talked to him again?

11 A. Correct.

12 Q. Totally fair. I'm not so worried about that. I just
13 want to know to the best of your recollection the entirety
14 of that conversation that sort of with the break in the
15 middle for the phone call what you talked about with
16 Mr. May. What did he tell you you were going to be
17 testifying about, what did he tell you your role was going
18 to be, what things did he say to you about that?

19 A. Sure. Specifically, he told me that I would be
20 testifying as it related to Cuyahoga County
21 investigations.

22 Q. Now, you say investigations, plural. Do you mean
23 Cuyahoga County investigation as relates to VS2 in this
24 case right now?

25 A. Investigations as in plural.

1 Q. Okay. So investigations into a particular area of
2 sweepstakes gaming?

3 A. Correct.

4 Q. Okay. And I apologize, I should know what the Ohio
5 rule is on this. The Federal Rule 60. I'm not trying to
6 violate grand jury secrecy or anything. But other than
7 that current charge, this is the only case that's charged,
8 in sweepstakes, in Cuyahoga County; is that right?

9 A. That's correct.

10 Q. You're saying there are other investigations; is that
11 correct?

12 A. Correct.

13 Q. He was going to ask you to go and speak in Columbus
14 about this investigation and those aggregate
15 investigations; is that correct?

16 A. I don't know if he was the one asking specifically,
17 but it had come from him. Yes.

18 Q. What specifically did he say to you about that that
19 led you to believe you were going to be talking about
20 Cuyahoga County investigations?

21 A. That -- Those words specifically.

22 Q. Okay. And you said what?

23 A. I said okay.

24 Q. Did you say -- I mean, have you ever testified in
25 Columbus before?

1 A. No.

2 Q. Okay. Yesterday we went through sort of ad nauseam
3 your background and experience, right?

4 A. Correct.

5 Q. Other than some informal training and the class you
6 took at the police academy 20 years ago, right, you're not
7 an expert in this field?

8 A. Correct.

9 Q. So you've got these investigations, and this is the
10 first one, this one right here, that's been charged,
11 right?

12 A. Correct.

13 Q. And so did you say to him you want me to talk about
14 the current case? Did you ask him that?

15 A. Quite frankly, I don't remember exactly how the
16 conversation went. I can generalize because I certainly
17 did ask --

18 Q. Please.

19 A. -- questions, so I'm leery to try to quote specifics.

20 Q. You and I are clearly on the same page. You clearly
21 asked some follow-up questions, right?

22 A. Yes.

23 Q. Because you're a smart guy and you would. So don't
24 get caught up on the quoting issue.

25 MR. MEYER: Objection.

1 THE COURT: Overruled.

2 Q. (BY MR. SCHAMEL) Give me your best of what happened
3 in that exchange.

4 A. That exchange, it was brief, but it was me trying to
5 clarify what I would need to discuss with my bosses as far
6 as what my role would be this morning.

7 Q. Okay. And your best recollection of that
8 conversation was?

9 A. To discuss Cuyahoga County investigations into
10 sweepstakes operators.

11 Q. Okay. And that you were going to go down there and
12 testify, and that's what you asked Mr. Croft?

13 A. Correct.

14 Q. And what did Mr. Croft say?

15 A. He said the same thing that I said, which is I'll
16 have to check with the chain of command.

17 Q. Okay. You went back and talked to Mr. May. What did
18 you tell him?

19 A. I told him I would let him know once I heard.

20 Q. Mr. May said?

21 A. Okay.

22 Q. Okay. And then you didn't see him again that
23 evening?

24 A. Correct.

25 Q. Did you speak to him again that evening anyway?

1 A. I did let him know it had been authorized.

2 Q. In what manner of communication did you let him know?

3 A. Telephone call.

4 Q. There was a telephone call to Mr. May last evening?

5 A. Correct.

6 Q. Approximately what time was that?

7 A. 6:30 or so.

8 Q. Okay. And what did you tell him in that telephone
9 call?

10 A. That I had been authorized to go to Columbus this
11 morning to testify.

12 Q. Okay. Maybe I missed something. You talked to
13 Mr. May at 5:30, right, then you called Mr. Croft?

14 A. Correct.

15 Q. Did you talk to anybody after you talked to Mr. Croft
16 but before you talked to Mr. May again?

17 A. He called back.

18 Q. Mr. Croft called you a second time?

19 A. Yes.

20 Q. Is it that second time Mr. Croft said yes, you may go
21 testify?

22 A. Yes.

23 Q. And you called Mr. May and told him that?

24 A. Yes.

25 Q. Did you talk about the substance of your testimony in

1 any way with Mr. Croft?

2 A. No, sir.

3 Q. Was Mr. Croft aware that you were a witness currently
4 on the stand under oath in this matter yesterday?

5 A. He knew there were proceedings this week, but I don't
6 believe he knew the specific status or where we were in
7 those proceedings.

8 Q. Mr. Croft is your boss?

9 A. Correct.

10 Q. Did he talk to you at any length during any of these
11 phone conversations about the proceedings here?

12 A. No, sir.

13 Q. How's it going? How's the hearing going? Nothing
14 like that?

15 A. Yes. He did ask how's it going.

16 Q. When I asked you the question did he ask you --

17 A. Sorry.

18 Q. We're going to try to think through this thing
19 together.

20 How did you tell him it was going?

21 A. I believe the word I used was long and brutal, and so
22 two words.

23 Q. I'll take long. He'll (indicating Mr. Malarcik) take
24 brutal.

25 A. There may have been a grueling in there somewhere, to

1 be honest with you.

2 THE COURT: You're hurting my
3 feelings now, Agent Boldin.

4 AGENT BOLDIN: None of those
5 comments were directed at the Court, Your Honor.

6 Q. (BY MR.SCHAMEL) Good answer.

7 Other than that, was -- Other than those three
8 words, did you talk in any way about the substance of what
9 was going on in those court hearings?

10 A. We did not.

11 Q. When you talked to Mr. May after you had gotten the
12 green light did you have an additional conversation or
13 follow up about what would be the substance of your
14 testimony?

15 A. No, sir.

16 Q. Did you know what he was going to testify to?

17 A. No, sir.

18 Q. So when you went to bed and you got up the next
19 morning I take it you already had made arrangements for
20 what time you would meet approximately the next morning?

21 A. Yes.

22 Q. You wake up the next morning. Walk me through it.

23 A. Through the morning entirely?

24 Q. Yes. That's today this morning. So we're within 12
25 hours of it, so tell me what happened this morning.

1 A. I got out of bed, took a shower.

2 Q. Fast forward. First socks, then shoes, then what
3 happened?

4 A. Left my house, went to the meeting location, got a
5 call from Mr. May letting me know he was running a couple
6 minutes late.

7 Q. Okay.

8 A. Met him at where we had decided to meet. He loaded
9 some items into the car; suit, shoes, computer.

10 Q. Okay.

11 A. And we made the trip to Columbus.

12 Q. And you drove?

13 A. Yes, sir.

14 Q. Okay. Just the two of you?

15 A. Yes.

16 Q. Government issued vehicle?

17 A. Yes, sir.

18 Q. On duty?

19 A. Yes, sir.

20 Q. And how long does that drive take?

21 A. A little over two hours.

22 Q. Okay. And when you're driving what's Mr. May doing?

23 A. For the trip down he was working on his laptop
24 computer.

25 Q. Okay. Was he working on his statement to the

1 Legislature?

2 A. I believe so, yes.

3 Q. Okay. And did he talk to you about it at all?

4 A. About content?

5 Q. Yes, sir.

6 A. No, sir.

7 Q. What did you talk about?

8 A. We didn't really talk about much on the way down. He
9 was working on his laptop.

10 Q. Okay. So silence?

11 A. Mostly.

12 Q. Okay. Did he tell you in any way, shape, or form
13 what he was testifying about?

14 A. I recall hearing words I think as he was constructing
15 sentences, you know what I mean, but there was no -- I
16 don't know that I recall any actual content or ideas that
17 were coming.

18 Q. You know what the next question is going to be,
19 right?

20 A. No. I wish I did.

21 Q. What words do you recall hearing?

22 A. I don't know that I can tell you. It wasn't a
23 conversation or anything that I was paying much attention
24 to.

25 Q. So is he typing and answering and just saying out

1 loud working through it in his head?

2 A. I don't even know if it was that much quantity. I
3 just recall hearing him speak at certain points.

4 Q. But you don't remember anything about the substance
5 of it?

6 A. No, sir.

7 Q. So you're on your way to testify in front of the
8 State Legislature, right?

9 A. Yes, sir.

10 Q. You've never done that before?

11 A. That's correct.

12 Q. Did you ask him any questions about what is going to
13 happen?

14 A. About what was going to happen, no.

15 Q. Did you ask him any questions about what you were
16 going to need to do?

17 A. No.

18 Q. You have any conversation at all about the substance
19 of what you guys were driving to Columbus for this
20 morning?

21 A. We did speak about it in the context of I had never
22 done this before, I was certainly nervous about it, not
23 sure what to expect. He indicated he also wasn't sure
24 what to expect. We had conversations about the general
25 fact that we were going to appear, and that would have

1 been the extent of it.

2 Q. You said earlier, you know, if I know Mr. May.

3 That's why I'm having a little bit of a hard time that he
4 wasn't doing that much talking. That's why I'm trying to
5 work it through with you.

6 About what time did you arrive in Columbus?

7 A. Approximately 8:30, 8:35, 8:40, somewhere in there.

8 Q. Did you receive any - I hope no texts or e-mails
9 because you're driving - but a text, e-mails, or phone
10 calls from anybody during your drive that had anything to
11 do with your testimony in Columbus?

12 A. No, sir.

13 Q. Did you receive any texts, e-mails, or phone calls
14 from anybody during your drive that had anything to do
15 with this case?

16 A. No, sir.

17 Q. Did Mr. May?

18 A. I don't know.

19 Q. He's sitting right next to you, right?

20 A. There was no telephone calls. I can't tell you if --
21 I know he was on his phone.

22 Q. Fair enough. That's what I wanted to know. When you
23 got to Columbus where did you go?

24 A. To the Statehouse.

25 Q. Where did you park?

1 A. The parking lot underneath.

2 Q. Who did you see?

3 A. At the Statehouse? I was met by Deputy Director
4 Cline and Executive Director Booker.

5 Q. What did those two gentlemen talk to you about?

6 A. We spoke briefly about the process, you know, where
7 we would be going, you know, the room we would be going
8 to, et cetera, and they were awaiting some correspondence
9 or conversation with others within the Department of
10 Public Safety regarding my appearance.

11 Q. And your proposed testimony?

12 A. Yes.

13 Q. Okay. And when you use the pronoun "we," you and
14 Mr. May?

15 A. No. Me and Mr. Cline and Mr. Booker.

16 Q. Was Mr. May with you when you were having those
17 conversations with Mr. Cline and Mr. Booker?

18 A. He was there briefly when we first arrived and then
19 he would have left and went up to I assume the hearing
20 room while I remained with Mr. Cline and Mr. Booker.

21 Q. And I should have asked this at the beginning. Cline
22 and Booker work in your agency?

23 A. Yes, sir.

24 Q. Are they agents? What is the proper term?

25 A. Mr. Cline is Deputy Director and Mr. Booker is the

1 Executive Director.

2 Q. I just want -- They've earned their title. I want to
3 address them properly.

4 When you met with Deputy Director Cline and
5 Executive Director Booker in the presence of Mr. May was
6 there any discussion about your testimony and what
7 testimony you would be giving in front of the Legislature?

8 A. There was no discussion about content. There was a
9 discussion about forwarding an e-mail containing the
10 written notes to their e-mails and to a third e-mail for
11 the Assistant Director of Public Safety, Joan Montgomery.

12 Q. What are the written notes referring to?

13 A. The written notes regarding what I was going to speak
14 to.

15 Q. When did you prepare that? Did I miss that?

16 A. Last night.

17 Q. How long were those you had written?

18 A. Four pages.

19 Q. Did anybody assist you in the preparation of those
20 notes?

21 A. No, sir.

22 Q. Do you have a copy of those notes with you by chance?

23 A. I have them in electronic form on my computer, which
24 is in the courtroom.

25 Q. Okay.

1 MR. SCHAMEL: Your Honor, I would
2 at this point make a request to have those notes
3 turned over to be reviewed.

4 THE COURT: Your request is
5 granted.

6 MR. SCHAMEL: I don't know the
7 sort of procedure, if it makes sense to ask the
8 officer to pull those up now or what's --

9 AGENT BOLDIN: I have a flash
10 drive. I can save them to print them to another
11 computer.

12 THE COURT: You can pull them
13 up. Do you have your computer right now?

14 AGENT BOLDIN: Yes.

15 THE COURT: Why don't you step
16 down. Is it here in the courtroom?

17 AGENT BOLDIN: Yes.

18 MR. SCHAMEL: Your Honor, at the
19 same time he's doing that could I also request if
20 there's e-mails contained that we've been
21 referring to and talking about could we have those
22 produced as well?

23 THE COURT: You may.

24 AGENT BOLDIN: For purposes of
25 printing, will that be in the back? Should I set

1 up in the back to do this?

2 THE COURT: My staff attorney
3 will help you.

4 Let's break for a few minutes so we can do
5 those.

6 MR. PITINNI: My client,
7 Chris Maggiore, was here today. He had a
8 previously scheduled Federal Arbitration at 12:30.
9 He left the courtroom to go to that. I do not
10 know when he will be done with that, but his
11 appearance has been excused for the remainder of
12 the hearing today. Thank you.

13 - - - o0o - - -

14 (Thereupon, a recess was had.)

15 - - - o0o - - -

16 THE COURT: Back on the record.
17 Joe is making additional copies for you, so when
18 he comes in the remainder of you will have them.

19 For the record, we had taken a break.
20 Agent Boldin has printed out the e-mails and the
21 notes he received as it relates to the Senate
22 Hearings this morning. Mr. Schamel has had an
23 opportunity to review those notes. We will mark
24 this as Court's Exhibit 1. And you can begin your
25 examination.

1 MR. SCHAMEL: Thank you, Your
2 Honor.

3 Q. (BY MR. SCHAMEL) Agent Boldin, it's about 5 to 5:00
4 here. I had a couple minutes. I got a copy. I
5 appreciate you printing these off for us. What I would
6 like to do is pick up where we left off and come back to
7 these documents. Is that fair?

8 A. Yes.

9 Q. So I think when we last left our hearing you were
10 getting to Columbus this morning and you were meeting with
11 Deputy Director Cline, Executive Booker?

12 A. Yes, sir. Executive Director Booker.

13 Q. Executive Director Booker. I apologize. And you
14 said that Mr. May was with you for a portion of it, he
15 went you think up to the hearing room and you stayed to
16 continue talking to them?

17 A. That's correct.

18 Q. Did you have any conversation with any of those
19 gentlemen, or, in fact, anybody else, about the content of
20 your proposed testimony?

21 A. There was conversation. It wasn't immediate, but
22 before going in there was conversation about it, yes.

23 Q. Let's talk about that conversation. What was said,
24 to the best of your recollection, and by whom?

25 A. Mr. Cline, Mr. Booker, and Director Charles all

1 stated to me that they had reviewed the comments and the
2 statement and that they said in essence it looks well
3 versed and good luck.

4 Q. Okay. Now, the statement that you refer to there is
5 the multiple-page document we marked as Court's Exhibit 1?

6 A. Yes, sir.

7 Q. It starts on Page 4, although that's not a numbered
8 page. It begins with -- And it looks like a
9 multiple-page, double-spaced document without a heading,
10 and it begins, Good morning, Chairman Coley.

11 A. Yes, sir.

12 Q. That statement when you showed that to these
13 individuals, this chain of command, they read it?

14 A. Yes, sir.

15 Actually, I want to address something about the
16 packet of e-mails since we're on that.

17 Q. Yes.

18 A. The e-mail in which I forwarded to them, for some
19 reason I had a problem getting that e-mail to save onto
20 the flash drive.

21 Q. Okay.

22 A. The body of the e-mail was attached file.

23 Q. Okay.

24 A. And this document was attached to Deputy Director
25 Cline, Executive Director Booker, and Assistant Director

1 Joan Montgomery. So that e-mail is not here where this
2 file had been forwarded to those individuals.

3 Q. Okay. So when we talk about Court's Exhibit 1, that
4 -- I'll just for purposes of our record say the final five
5 pages of Court Exhibit 1 is the document you're referring
6 to, it's your testimony, your proposed testimony as
7 written by you, that was e-mailed to those three
8 individuals?

9 A. Yes, sir.

10 Q. And the e-mail that went with that you just couldn't
11 print up?

12 A. Correct.

13 Q. And so Page 1 of Court Exhibit 1 is the William P.
14 Coley, II, State Senator, Revised Committee Notice, the
15 very top of the page?

16 A. Yes, sir.

17 Q. That is the document you indicated was sent to you
18 letting you know about attending tomorrow?

19 A. Correct.

20 Q. Which is, in fact, today?

21 A. Yes.

22 Q. Has two agenda items. House Bill 605, schemes of
23 chance - deter/investigate prohibited?

24 A. Yes.

25 Q. Second one is 391, which is ethics laws - Revise?

1 A. Correct.

2 Q. You didn't stay for that, did you?

3 A. No, sir.

4 Q. And then the second page, which is actually numbered
5 Page 1, is the e-mail from James May sent Monday, December
6 10th, 7:58 p.m. to Robert Boldin. Subject: where we will
7 attack "sweepstakes" on a macro level; is that correct?

8 A. Yes, sir.

9 Q. The next page is also labeled as Page 1, but it's
10 actually Page 3 of this exhibit, from James May dated
11 yesterday at 9:09 to you, Robert Boldin, saying Subject:
12 where we will attack "sweepstakes" on a macro level. That
13 says, GOR Committee Notice 12-11-12 - Revised.doc as an
14 attachment?

15 A. Yes.

16 Q. That attachment is actually the top page?

17 A. Yes, sir.

18 Q. So we're all on the same page. So when you're having
19 this discussion this morning, you're down there in
20 Columbus and you're discussing this matter with those
21 three executives you just described that is your chain of
22 command, and they had already received this from you?

23 A. Yes, sir.

24 Q. Okay. They received it last night or this morning?

25 A. I forwarded it to the three of them this morning.

1 Q. Okay. That would have been the first time they
2 received it was this morning. It hadn't gone anywhere
3 before today. Okay. And let me ask you this; did you
4 have a discussion with the three of them, or frankly with
5 anybody, about the fact that this hearing in this case was
6 going on yesterday and today?

7 A. Again, the same similar to that of Mr. Croft,
8 although possibly even less detailed than with him that
9 this case was ongoing and there were hearings this week.

10 Q. Were any of the three of them made aware or were they
11 aware, to your knowledge, that you were in the process of
12 testifying?

13 A. No, sir.

14 Q. The three of those gentlemen or the other people you
15 talked to down there within your chain of command, were
16 they aware that Mr. May was the prosecutor in this case?

17 A. I don't recall them speaking of it, so I don't know
18 if they were aware or not.

19 Q. Did you --

20 MR. SCHAMEL: Judge, I will --

21 Q. (BY MR. SCHAMEL) Did you discuss with Mr. Croft,
22 Deputy Director Cline, Executive Director Booker, the last
23 gentleman I forgot because I have to write it down --

24 A. Tom Charles.

25 Q. Tom Charles. His title?

1 A. Director of Public Safety.

2 Q. He's the big boss?

3 A. Yes, sir.

4 Q. Okay. Did you discuss with any of them your
5 obligation to be in court today?

6 A. No, I don't believe so, sir.

7 Q. Were any of them aware or made aware by you that you
8 were supposed to be back testifying this morning at 9:30?

9 A. They were not aware of this schedule.

10 Q. Okay. Were they aware of any schedule that required
11 you to be here in the Court of Common Pleas of Cuyahoga
12 County in front of Her Honor today?

13 A. No, sir.

14 Q. Did you and Mr. May during your two conversations,
15 broken up by Mr. Croft by your telephone call, or during
16 the course of your drive, ever have any discussions about
17 your obligation as a witness to be here this morning at
18 9:30?

19 A. At some point during one of those conversations there
20 was reference to these proceedings, yes.

21 Q. Okay. Talk about that, to the best of your
22 recollection, about the reference made.

23 A. I specifically asked if there was an issue, you know,
24 with us being in Columbus this morning.

25 Q. And what did he specifically respond?

1 A. His response was that the Court was aware of it I
2 think is how he responded to that.

3 Q. And that was last evening or was that this morning?

4 A. I think that was yesterday because it would have been
5 during the time when this came up.

6 Q. And did you independent of that take any efforts to
7 notify anyone within your chain of command, which you said
8 you haven't talked to them about your testimony, to notify
9 the Court or anybody else that you weren't going to be in
10 court at 9:30 this morning?

11 A. No, sir.

12 Q. Do you feel it incumbent upon yourself to do so?

13 MR. MEYER: I'll object to the
14 scope.

15 THE COURT: Very good. It is
16 what it is right now. Move on.

17 Q. (BY MR. SCHAMEL) You got in the car with Mr. May
18 about 6:30?

19 A. Yes, sir.

20 Q. Were you there when he made a phone call around 8:30?

21 A. I believe he did make a phone call, yes. He may have
22 made a couple. Yes, he did make some phone calls.

23 Q. Do you remember who he called?

24 A. I don't remember. I'm assuming, but I don't know
25 that I heard him address anybody by title, okay, but it

1 would have been a phone call to someone at or associated
2 with the operation of this court.

3 Q. Okay.

4 A. And he, I'll never remember specific words, but was
5 in essence telling that person we would, in fact, be in
6 Columbus this morning.

7 Q. Did he have a voice-mail he left or an actual
8 conversation with someone?

9 A. I don't recall.

10 Q. After he had that conversation, in light of the fact
11 that you believe he told the Court the night before he was
12 aware, do you ask why there was a follow-up call?

13 A. No.

14 Q. Can you find it odd that he -- last night the Court
15 knew and he's calling this morning?

16 A. No.

17 Q. Did you discuss or did he tell you anything about why
18 he did that?

19 A. No, sir.

20 Q. You're down in the Columbus meeting with the
21 Executive Director, Deputy Director, the whole gang was
22 there. Other than reviewing and telling you good luck,
23 did they tell you anything else?

24 A. No.

25 Q. Did anybody else give you anything for preparation?

1 A. There was one preparation from Deputy Cline in which
2 he instructed me -- I believe the portion we were talking
3 about was how to address the committee should any
4 follow-up questions be asked of me and the manner in which
5 to address the committee.

6 Q. And what did he say?

7 A. I believe he instructed me to say, if a question was
8 asked, to direct, you know, Mr. Chairman and then the
9 senator that had asked the question before I gave my
10 response.

11 Q. More sort of --

12 A. Structural.

13 Q. -- structural. Okay.

14 Did you discuss with them what you had written in
15 here in Court Exhibit 1, the last five pages?

16 A. No, sir.

17 Q. Okay. I would like to talk to you now, if I could,
18 about this. Okay?

19 A. Okay.

20 Q. Okay. Enough looking at this. The second full
21 paragraph -- And I apologize, the pages are not numbered,
22 but you say in the second full paragraph -- And you wrote
23 this, right?

24 A. Yes, sir.

25 Q. Your testimony is nobody told you what to write?

1 A. Correct.

2 Q. Since August, 2001, I have been the lead investigator
3 into what was discovered to be a multi-state and
4 multi-national enterprises operating what we have come to
5 commonly know as "sweepstakes" cafes or "internet cafes."
6 You wrote that?

7 A. I believe you said 2001. It should say 2011.

8 Q. You're right. I did misspeak, and I apologize. It
9 does say 2011. I appreciate your attention to detail.

10 And in August 2011 what were you referring to?
11 What happened in August of 2011 that you picked that date?

12 MR. MEYER: Your Honor, I'm
13 going to object to the questioning. This is
14 beyond the scope of the hearing that we're dealing
15 with today.

16 THE COURT: Let me see counsel
17 at sidebar just briefly, please.

18 - - - o0o - - -

19 (Thereupon, a discussion was
20 had off the record.)

21 - - - o0o - - -

22 MR. SCHAMEL: If I may, Your
23 Honor?

24 THE COURT: You may.

25 Q. (BY MR. SCHAMEL) Let's see if we can get through the

1 next hour. So the substance of these five pages, is this
2 what you read when you went into the hearing room?

3 A. Yes.

4 Q. Did you simply read these, is that what you read as
5 like a prepared statement?

6 A. Yes.

7 Q. Did you field any follow-up questions?

8 A. There was one follow-up question.

9 Q. Do you remember what that was?

10 A. It was phrased along the lines of based upon your
11 statement today, do you agree these -- do you agree issues
12 regarding these establishments could be handled through
13 regulations. And I don't know that I'm phrasing it right.
14 But the crux of the question was do you believe that
15 regulations should be imposed.

16 Q. Okay. In the final time before you went into the
17 hearing, when you were with these other folks, did you
18 have any other contact with Mr. May?

19 A. We were in the same area. We were, you know,
20 together as we were both waiting to go into the room.
21 There was no room inside, so there was a large number of
22 people in the hallways outside. So contact, yes.

23 Q. Okay. Did you talk to Mr. May about his testimony or
24 your testimony?

25 A. I don't recall having any conversations with him

1 before we went in about anything either of us were going
2 to discuss. I just don't remember talking about the
3 specifics regarding testimony.

4 Q. Did you show him your statement?

5 A. No, sir.

6 Q. Did he show you his?

7 A. No, sir.

8 Q. And when you went in to give your testimony, where
9 was Mr. May?

10 A. He would have been in the hallway still.

11 Q. So you don't know if he was in there when you
12 testified?

13 A. I don't know where he went. Tunnel vision set in
14 early on.

15 Q. The fight or flight response, a lot of people
16 watching. I'm standing here and I have all these people
17 behind me making faces probably.

18 When you completed your testimony where did you
19 go?

20 A. Back out to the hallway.

21 Q. Then Mr. May went in?

22 A. Yes.

23 Q. Did you watch Mr. May testify?

24 A. I saw him. I heard some of it. I couldn't hear some
25 of it. You know, there was no room inside.

1 Q. What did you hear?

2 A. Oh, boy. I heard him open with introduction
3 background, Cuyahoga County Prosecutor's Office. I heard
4 him discuss the -- I think the word he used was
5 proliferation of sweepstakes cafes --

6 Q. I'm listening.

7 A. -- the sweepstakes cafes within Cuyahoga County. I
8 know he discussed at length case law. I believe he cited
9 a number of cases and discussed the content of other cases
10 that he discussed in his statement. I apologize. I'm
11 trying to think back to what he said. I know he
12 repeatedly came back to some case law because I remember
13 him citing specific cases.

14 Q. When he was doing that -- And for the purposes of
15 these questions I'm just going to refer to our current
16 case that we're sitting here, this whole motley crew,
17 we'll call it the VS2 Case, fair?

18 A. Fair.

19 Q. Did he reference the VS2 Case either - let me put a
20 finer point on it - directly referencing this case by case
21 name or talk about the details of this case in such a way
22 that you knew as the lead agent this is the case he is
23 talking about?

24 A. I think through the course of it I think there were
25 two times. One would have been as a result of my

1 knowledge of this case. I believe he made a reference to
2 a dollar amount that has been associated with this case,
3 47 or 48 million dollars.

4 Q. In what context?

5 A. I don't -- I just remember that was the part I
6 caught. I had a very difficult time catching a lot of his
7 testimony so it was a lot of bits and pieces. I do
8 remember the dollar amount, and I believe that would have
9 been a specific reference to this case because that dollar
10 amount I think was trotted out profusely through some
11 press releases and whatnot.

12 The other time I did hear him reference VS2, and
13 that was in the context of I believe there was testimony
14 from an economist prior to us, and I believe there was
15 some association or reference to some association between
16 that economist and VS2, and I remember Mr. May addressing
17 economic data, and I don't know the specifics but
18 discussing that portion of how that related, and VS2 was
19 certainly mentioned by him I think at that time as well.

20 Q. Did Mr. May say anything to you before he testified
21 about asking you not to go in and hear his testimony or
22 not to listen to it because you're a witness?

23 A. No, sir.

24 Q. Okay. And it's clear as we sit here today, right now
25 at about 5:15 p.m., that earlier today you heard the

1 prosecutor in this case, JD May, talking publicly about
2 the case in which you are now testifying; is that right?

3 A. I would say yes.

4 Q. There's the second page of the document that we've
5 marked as Court's Exhibit 1, it says Page 1. It's the
6 James May, December 10, 2012, 7:58 e-mail. Says Bob.
7 That's you, right?

8 A. Yes.

9 Q. It says, Attached please find our minimalist
10 instructions. Is that driving instructions?

11 A. No. I believe I may have made an error in the
12 sequence of telephone calls. After I received this e-mail
13 and told Mr. May I did not receive the attachment
14 instructions, so that's why there was no attachments,
15 which led to that phone call.

16 Q. I'm sorry, I didn't mean to talk over you. Were you
17 done with your answer?

18 A. Yes.

19 Q. Okay. The instructions then you received from
20 Mr. May you received verbally?

21 A. No. The instructions would have come in the second
22 e-mail, which would be also marked Page 1, but Page 3 in
23 the sequence, where the attachment is the GOR Committee
24 Notice.

25 Q. Okay. So when I heard the word "instruction," what

1 you're referring to is the committee notice is the
2 instruction?

3 A. Yes.

4 Q. And in the next sentence on that Page 2, labeled as
5 Page 1, we'll call it the 7:58 e-mail, Our contact who
6 will be at the hearing is Leah Pappas Porner. Who is
7 that?

8 A. I don't know who she is. I met her this morning.

9 Q. You did. What did you talk to her about?

10 A. The procedure of testifying, providing copies to
11 committee members of the statement you have here as well.

12 Q. Just so we're clear and we don't have any
13 misunderstanding, is she a white woman with long, dark
14 hair?

15 A. Yes.

16 Q. Maybe blue/green eyes?

17 A. I don't know.

18 Q. Okay. Do you know that she works for a company
19 called Calfee, a firm called Calfee?

20 A. I do. And to that point, I think I need to apologize
21 to you and the Court because I think I did miss an e-mail
22 when you asked about e-mails that were sent.

23 Q. Sure. Let's talk about that.

24 A. It would have been an e-mail to her because she was
25 printing out copies of this. So it would have also been

1 the attached file body of an e-mail that would have been
2 sent to her. And I apologize for not including that. I
3 could certainly produce that as well.

4 THE COURT: This e-mail was
5 included to her is what you're saying?

6 AGENT BOLDIN: Yes. The body of
7 the e-mail would have been attached file.

8 Q. (BY MR. SCHAMEL) lpappasporner@calfee.com, does that
9 sound right?

10 A. I would have to look, but certainly sounds familiar.

11 MR. SCHAMEL: Your Honor, in that
12 old thing we learned in evidence, you can let them
13 smell the pasta if it refreshes the recollection.

14 I'll show the government what I'm going to
15 show him to see if it refreshes his recollection
16 of the lady.

17 Q. (BY MR. SCHAMEL) Don't read anything, but does that
18 young lady look familiar to you? Does that look like the
19 lady you met earlier?

20 A. It could be. I had such little contact with her. I
21 don't remember her, but it certainly could be.

22 Q. Did anybody tell you during the course of your
23 e-mailing her today or talking to her she's a registered
24 lobbyist for the casino developer Rock Gaming here in
25 Ohio? Did anybody tell you that?

1 A. I don't know that I was told she was a registered
2 lobbyist.

3 Q. What were you told?

4 A. In the conversation with Mr. Cline and Mr. Booker
5 there was reference to waiting for Director Charles'
6 approval for my testimony today, and in that conversation
7 was referenced the -- I believe it was a specific
8 reference to the Horseshoe Casino and their - I want to
9 make sure I phrase this right - their involvement or
10 backing of the legislation.

11 Q. Just so I'm -- So I'm sort of confused. So you were
12 introduced to the lobbyist for the Horseshoe Casino who is
13 backing the bill that you were there to speak about; is
14 that right?

15 A. I wasn't introduced to her as that person.

16 Q. Okay.

17 A. So it wasn't I would like you to meet so and so, a
18 lobbyist.

19 Q. She didn't wear a big t-shirt that said lobbyist.
20 They said, Hey, this is the lady you sent your stuff to,
21 right?

22 A. Yeah. She was near the table and --

23 Q. What table?

24 A. We were sitting at a table in the rotunda.

25 Q. Who?

1 A. That was when we first got there. That would have
2 been Mr. May, myself, Mr. Cline, and Mr. Booker.

3 Q. Okay. I'm going ask you something here, and I will
4 be very careful how I ask it because I don't want it to
5 come across wrong, I find as we're questioning here and
6 getting deeper we are remembering other people. We talked
7 about that meeting, and Ms. Pappas never came up.

8 I would ask you when you sat down with somebody
9 and somebody was there, who was or was not there, you
10 really plumb your memory from earlier today as to
11 everybody you met with. Okay?

12 A. Fair enough.

13 Q. Okay. I don't want to have to do this sort of
14 piecemeal game of every single person. So when I say when
15 you're sitting down with somebody, who all was there, or
16 like My Cousin Vinny, the youts, what youts was there, I
17 want you to tell me all of them. So if I missed anybody
18 other than Ms. Pappas at this little meeting you had in
19 the rotunda.

20 A. And again, I think that's maybe why it was
21 mischaracterized, and I apologize for that. I think you
22 made reference to meetings and discussions, and I
23 apologize for that. The people that -- The sum total of
24 people I had contact with today would have been
25 Ms. Pappas, Mr. May, Mr. Cline and Mr. Booker. After I

1 was told to go up to where the hearing room was then at
2 that point I had the conversation with Director Charles.

3 Q. Uh-huh. Was Ms. Pappas with you then?

4 A. No. She returned briefly to deliver the copies.

5 Q. Uh-huh. So the only time you were with Ms. Pappas
6 was when you were sitting downstairs in the rotunda at the
7 table?

8 A. Again, brief contact when she delivered -- I was
9 upstairs when she delivered the copies.

10 Q. Okay. So when Mr. May says, Our contact who will be
11 at the hearing is Leah Pappas Porner, she was sort of
12 leading you around for this?

13 A. I -- In all respects, I was being led around for most
14 of this. I wasn't in control of anything this morning,
15 or, quite frankly, any time since.

16 Q. Okay. And when you just a minute ago said that you
17 came to know that Ms. Pappas was the lobbyist, your
18 understanding was Ms. Pappas was a lobbyist for the
19 Horseshoe Casino, how was it you became aware of that?

20 A. No. I don't think at any point that I knew she was a
21 lobbyist. There was a very brief reference made to the
22 association of the Horseshoe Casino to the support of the
23 legislation, and I believe it was quite frankly in the
24 term of political implications that were causing the delay
25 for our bosses to review -- my bosses to review whether or

1 not I was going to testify. So the reference to the
2 casino came up in that context.

3 Q. So that I'm understanding it correctly, the reference
4 to the casino was concern within your chain of command
5 about assisting the association of the Horseshoe Casino?
6 Am I sort of encapsulating that issue correctly?

7 A. I don't know if assisting is the right
8 characterization. I think in having me at that hearing
9 when there was that association or connection. But again,
10 I wasn't involved in the discussions or the debate on that
11 issue.

12 Q. Was Mr. May there when you met with Ms. Pappas
13 Porner?

14 A. He was at the table the first time when she came up,
15 yes.

16 Q. Okay. And did she say anything at any time about
17 either the substance of your testimony -- I'll break it
18 down to two questions. Did she say anything to you at
19 that time or at any other time about the substance of your
20 testimony?

21 A. No, sir.

22 Q. Did she e-mail you in response to having received
23 that e-mail with that five-page statement about having
24 received it or about the substance of your testimony?

25 A. No, sir.

1 Q. Okay. Did she discuss with you in any way this case,
2 the VS2 Case?

3 A. No, sir.

4 Q. Did the VS2 Case get discussed in her presence?

5 A. No, sir.

6 Q. Was she aware, if you know, that you are the lead
7 case agent on the VS2 Case?

8 A. I don't know.

9 Q. Are you aware that Mr. May chose you to testify
10 because you are the lead case agent in the VS2 Case?

11 A. I don't know.

12 Q. Nobody said that to you, that's not your
13 understanding?

14 A. I don't recall ever being told that I was --

15 Q. Just picked you because you're good looking?

16 A. No, that's certainly not it. There was a
17 conversation in which the words lead investigator were
18 used, and it would have been a conversation with Mr. May,
19 and I think it's fair to assume that he was probably
20 explaining why I was going down there. I don't remember
21 the entirety of the conversation, but I certainly have the
22 impression that that was the nature of it.

23 Q. They picked you to testify because of this case?

24 A. This specific case, no.

25 Q. The sweepstakes cases here in Cuyahoga County in

1 general?

2 A. Yes.

3 Q. You're the lead case agent for all of those?

4 A. Yes.

5 Q. Let me ask you about Ms. Pappas Porner. Are you
6 aware, if you are, she's an attorney?

7 MR. MEYER: Objection as to
8 relevance, Your Honor.

9 THE COURT: I'm going to
10 overrule it and allow it for now, but just make
11 sure you're keeping your questions narrow. Okay?

12 MR. SCHAMEL: Yes, Your Honor.

13 A. No, sir.

14 Q. (BY MR. SCHAMEL) To your knowledge, was she ever
15 made aware or does she know that you were testifying in
16 this case?

17 A. I don't know.

18 Q. Okay. The next line in that same e-mail from
19 Mr. May, e-mail at 7:58 p.m., Since your bosses will be
20 there I guess we better prepare something really good!,
21 Right?

22 A. Yes, sir.

23 Q. It references, I guess we better prepare something
24 really good! What did we prepare?

25 A. I couldn't tell you. I'm assuming that's because we

1 were collectively going.

2 Q. Okay. But there was no joint preparation between the
3 two of you?

4 A. No, sir.

5 Q. Your position is that you alone created the document
6 that was sent to the lobbyist and you did that from your
7 own memory?

8 A. Yes, sir.

9 Q. Okay. The last sentence -- And there's a sentence
10 about Deneen Hernandez, that's Special Agent Hernandez,
11 right? And then the last full sentence, Any more
12 coordinates for the Pilot meeting site of which you speak
13 will be welcomed. Is that just JD speak? What does that
14 mean?

15 A. That's where we met to drive to Columbus, Pilot Gas
16 Station.

17 Q. Got that. So Mr. May testifies and you say you hear
18 sorts of bits and pieces of his testimony. What happens
19 after he testifies?

20 A. We immediately left.

21 Q. Okay. When he finished testifying had -- did you
22 form any impressions of his testimony? How did you think
23 he did?

24 A. The parts I heard I thought were well spoken.

25 Q. Okay. How about the substance?

1 A. I guess I would say from what I heard I thought it
2 was good. I thought he spoke well to the point.

3 Q. How about the substance of his testimony, what did
4 you think about the substance of the testimony?

5 A. In what manner? Did I approve or disapprove?

6 Q. Yeah, sure.

7 A. I approved.

8 Q. Okay. And in particular, what was your impression of
9 his testimony when he referenced the VS2 Case?

10 A. Those references were passing at best. I don't
11 recall really thinking too much about the substance.

12 Q. Okay. You didn't think too much about it. The
13 little bit you did think about them, what did you think
14 about them?

15 A. Really, the only one I think I thought anything about
16 was his reference to the economist and data that had been
17 provided by the economist. He had referenced that, and I
18 just remember thinking that was a good point.

19 Q. What did he say? What was the good point?

20 A. He had referenced the economist I think being
21 provided by VS2.

22 Q. Okay.

23 A. And his statement to that was specific to that VS2
24 had provided the economist. And there was a reference to
25 expenses but not profits I think is how it went.

1 Q. Okay.

2 A. So that was the part that I thought was worthwhile.

3 Q. How come?

4 A. I just thought it was an interesting point that there
5 would be discussions of expenses but not profits.

6 Q. Is it fair to say that was a new point you hadn't
7 heard before?

8 A. That would be fair to say.

9 Q. So just to nail this one down, you listened to
10 Mr. May testify today while you're under oath in this case
11 and you heard a new point that you thought was a good
12 point about this case; is that right?

13 A. Well, the data wasn't about this case.

14 Q. He was the economist?

15 A. Correct.

16 Q. From VS2?

17 A. Correct.

18 MR. MEYER: Your Honor, I'm
19 going to object to the questioning at this point.

20 THE COURT: Overruled.

21 Q. (BY MR. SCHAMEL) And so as it relates to VS2, which
22 is what this case is about, right?

23 A. Yes.

24 Q. You heard a good new point that involved VS2; is that
25 fair to say?

1 A. Categorized like that then, yes.

2 Q. Great. So Mr. May comes out now. We've all said how
3 JD is. Did he say, How did I do?

4 A. At some point he did. I think the first thing he
5 said was, We need to go.

6 Q. Okay. So we need to go walking. Then the next point
7 he says is, How did I do?

8 A. Yeah. I think we both --

9 Q. Asked each other that?

10 A. -- asked each other that question.

11 Q. You asked him if he had seen you testify?

12 A. Yes.

13 Q. And he said he had?

14 A. I don't remember how I asked it, but yes, I did
15 inquire as to whether he caught it.

16 Q. He had responded, in fact, he had?

17 A. Yes.

18 Q. He asked you if you had seen him testify, and you
19 said, in fact, you had?

20 A. Yes. I think I told him the same thing; I missed a
21 lot of it but the parts I caught -- I believe the way I
22 answered was I missed a lot but what I caught was good.

23 Q. You guys are feeling good, you congratulated each
24 other?

25 A. I don't know that either of us were feeling all that

1 good.

2 Q. You hadn't screwed the pooches, as they say?

3 A. Correct.

4 Q. You get in the car and you head back. Who is
5 driving?

6 A. I was.

7 Q. Who did JD call and report back how he did?

8 A. There were a variety of phone calls.

9 Q. I bet there were. Let's talk about each one of them.
10 Who did he call first?

11 A. I have no idea. I didn't ask him who he was calling.

12 Q. What did you hear, to the best of your recollection,
13 while he's sitting next to you in the car, just the two of
14 you driving, who does he call and what does he say?

15 A. Well, I don't know who he calls.

16 Q. Okay. What do you hear?

17 A. I heard him say that we're done, we're on our way
18 home, I thought it went well. You know, and I think that
19 if it wasn't that call or at that time, I don't recall
20 anything else that he said on the phone. And quite
21 frankly, I also made phone calls, so there were multiple
22 conversations going on.

23 Q. I've never testified in front of anybody. They don't
24 want to hear what I have to say. So I'm guessing this is
25 a kind of big deal?

1 A. Somewhat.

2 Q. So you're calling folks and he's calling folks?

3 A. Yes.

4 Q. You're both talking about how you did in your
5 testimony in each other's presence, right?

6 A. I can't speak to what he was talking about in all his
7 phone calls. I did hear him say at least once that he
8 thought it went well.

9 Q. How about conversations between -- Did you remember
10 anything else, anything I'm missing? What else did he say
11 that you recall?

12 A. Well, there were planning phone calls being made
13 regarding appearing back here today.

14 Q. Right. Talked to Don, right, somebody did?

15 A. I believe so.

16 Q. What did he say about that, about being late getting
17 back to court and everybody waiting? Uhm, oh, Judge was
18 mad?

19 A. He was certainly concerned about the timing.

20 Q. How long did you anticipate you would be down there
21 when you went down there this morning?

22 A. I didn't really have much of an idea of the plan of
23 the schedule.

24 Q. Okay. But you're a big boy and you know you're
25 responsible for timing back and forth. So what I'm asking

1 you is when you got in the car at the Pilot Gas Station
2 with JD May and you drove to Columbus to testify, when did
3 you believe you would return to this courtroom to this
4 courthouse to testify?

5 A. My understanding was early lunchtime or early
6 afternoon. I don't know if I was told that. I had to
7 have been told it in some manner. I don't see any reason
8 why I would assume that on my own. I don't remember being
9 told we'll be done there in the morning, but I remember
10 that there was some conversation about being back here in
11 the afternoon.

12 Q. Were you told that by Mr. May?

13 A. It would have had to come from Mr. May. I didn't
14 talk to anybody else about the arrangements.

15 Q. What other things did you and Mr. May discuss on the
16 ride back? And this is literally as broad a question I
17 can ask you. I mean, did you talk about the weather? Did
18 you talk about how the Browns won this weekend, killed
19 those Chiefs? Did you talk about the testimony? Did you
20 talk -- What did you talk about?

21 A. We talked about a little bit of everything. We
22 talked about -- We did talk about some of the testimony.

23 Q. Okay. You sort of zoomed in on what I care most
24 about.

25 A. I assumed so.

1 Q. That's a fair assumption. What do you got?

2 A. We talked about his points of making -- bringing up
3 case law.

4 Q. Okay. I'm going to interrupt you and ask you this;
5 you talked about his points of bringing up the case law.
6 To the best of your recollection, and this ride back was
7 about 1:00?

8 A. Yes, sir.

9 Q. From noon until 2:00; is that fair?

10 A. Yeah. 12:30 or 11:30 or so I think is when we --

11 Q. Okay. From 11:30 until about 1:30 you're driving
12 back from Columbus together, right?

13 A. Yes.

14 Q. I'm assuming it's the middle of the workday, you're
15 driving, you're not drinking?

16 A. No, sir.

17 Q. You have no head injuries I should know about with
18 loss of memory?

19 A. Yes, sir.

20 Q. It's now 5:40. So four hours ago when you got back
21 here, that's what I'm talking about when I ask these
22 questions. Okay?

23 A. Yes, sir.

24 Q. What is your best recollection of what exactly
25 James D. May said to you in the car on the drive back

1 about the case law and stuff?

2 A. He asked me if I thought he went too long. He asked
3 me if I thought he made good points bringing up the case
4 law. We talked about how I felt I did overall in my
5 testimony.

6 Q. Let's put a pin in that one and we'll come back to
7 it. How did you think he did? Did he go too long?

8 A. I didn't think he did.

9 Q. And how did you think he did about his points about
10 bringing up case law?

11 A. I personally thought he did fine.

12 Q. And that's what you told him?

13 A. Yes, sir.

14 Q. Made him happy?

15 A. I hope so.

16 Q. And then you were just about to tell us about the
17 parts about your testimony. What exactly did you say to
18 him about your testimony?

19 A. Just the nature of -- Started with well, I'm glad
20 that's over, that was stressful, nerve-racking, et cetera,
21 you know. Talked about, quite frankly, how I had never
22 envisioned being in that situation or being asked to be in
23 that situation. Talked about the question that the
24 committee member had asked at the end. We actually talked
25 at length about that question and specifically if it was

1 some sort of a tell or an indicator, and actually we had a
2 fair amount of discussion about that question, about other
3 questions that we had heard committee members ask and
4 about what our take was on what that meant to their
5 deliberations and where they stood on the issue.

6 MR. SCHAMEL: May I approach,
7 Your Honor?

8 THE COURT: You may.

9 Q. (BY MR. SCHAMEL) You've done a great job, Agent, at
10 sort of giving us the categories of what you discussed.
11 What I would like to do now, if I could, drill down with
12 you a little bit about your specific recollections of what
13 he said, what you said. Think about it as if you are
14 undercover and you're an affiant and you've got to put
15 some quotes into an affidavit. That's what we're looking
16 for. What exactly did you say to him about your
17 testimony?

18 THE COURT: To be clear, I
19 think we should just note for the record when
20 you're speaking about testimony you're speaking
21 about testimony at the hearing this morning, not
22 your testimony yesterday in this courtroom; is
23 that correct?

24 AGENT BOLDIN: Yes.

25 THE COURT: Okay. Go on.

1 A. I'm trying to recall any specific line items that we
2 broke down, and I don't recall having any such specific
3 conversation about specific lines or points in the
4 testimony.

5 Q. (BY MR. SCHAMEL) Okay. How about this case? You
6 mentioned earlier before we took the break at about 3:00
7 that you talked a little bit about this case?

8 A. Yes, sir.

9 Q. What did you talk about with regard to this case with
10 Mr. May?

11 A. Quite frankly, I was hoping he could educate me on
12 some procedural issues.

13 Q. Okay. So you initiated the conversation about this
14 case?

15 A. Yes.

16 Q. Okay. And I imagine his first response was,
17 Absolutely not, we can't talk about the case, you're a
18 witness, right?

19 A. No, sir.

20 Q. He didn't say that to you?

21 A. No, sir.

22 Q. What did he say?

23 A. I told him what my question was.

24 Q. What was your question?

25 A. My question was how many motions had been filed.

1 That's actually how I opened the subject was trying to
2 determine how many motions had been filed and how many of
3 those motions were joined by other Defendants, and there
4 were a number of questions on my part about those motions,
5 about how they would be heard, order they would be heard,
6 manner in which they would be heard. Quite frankly,
7 trying to get educated on this process because this is all
8 very unusual.

9 Q. Well, you testified at a suppression hearing before,
10 right?

11 A. Yes.

12 Q. You ever testified in a Franks Hearing before?

13 A. No, sir.

14 Q. Okay. When you asked him -- Let me ask you this
15 question if I could, Agent; about how many times have you
16 testified in your career ballpark in your 20 years?

17 A. Several hundred.

18 Q. Okay. And you understand what it means to testify
19 under oath?

20 A. Yes.

21 Q. And you understand what it means when you're -- Let
22 me ask you a different way. I'll withdraw that other.

23 I'm sure when you've testified you've not
24 completed your testimony in the course of a day; is that
25 fair?

1 A. Yes.

2 Q. The judges have admonished you at the end something
3 along the lines, Agent, you're still a witness, you're
4 still under oath, don't talk to anybody about your
5 testimony?

6 A. I've been told that, yes, sir.

7 Q. I'm guessing in the hundreds of cases you've
8 testified you have been told that more than a couple
9 times?

10 A. When cases have gone multiple days, yes.

11 Q. You understand your obligation as it relates to
12 having any discussions with anybody when you're a witness
13 in the middle of your testimony, right?

14 A. Yes, sir.

15 Q. You understood when you left here yesterday that you
16 were the first witness to be called this morning, right?

17 A. Yes.

18 Q. So you knew you were going to be coming back into
19 court this morning under oath testifying?

20 A. Yes, sir.

21 Q. There is no question in your mind that you are a
22 witness?

23 A. No, sir.

24 Q. And you also understand that you were supposed to be
25 here at 9:30, which is why you raised the question with

1 Mr. May about aren't we supposed to be here?

2 A. Yes, sir.

3 Q. Okay. And in this context you asked Mr. May
4 questions about this case, correct?

5 A. About the case, yes.

6 Q. Okay. And you asked Mr. May questions about the
7 motions that have been filed, correct?

8 A. Yes, sir.

9 Q. And how did Mr. May respond? And again, I'm not
10 asking for generalities. I'm asking for the most specific
11 recollection you have of a conversation that occurred
12 about four and a half hours ago as to how he responded.
13 And, to the best you can, use sort of the JD speak. If he
14 said well, you know, for example, those such and suches
15 filed so many motions they're meritless, things of that
16 nature. What did he say to you?

17 A. First there was a response to my question about how
18 many motions had been filed. He was trying to take a
19 mental count of how many motions had been filed with the
20 case.

21 Q. And he said?

22 A. I believe 21 was where we came up. I didn't actually
23 write it down, but I believe it was -- And my questions
24 also I think were we got to 21, or how we got to 21. I
25 asked about motions to join other motions, and that was

1 part of that question about motions and how they applied
2 between various Defendants.

3 Q. We killed a lot of trees.

4 A. I believe I may have actually made the comment, And
5 the Rain Forest had been slain in the development of those
6 motions.

7 Q. And what, if anything, did he say to you about the
8 arguments that were put forth in those motions, or what
9 did he say about them?

10 A. We discussed again the quantity of the motions, and
11 then --

12 Q. I'm going to cut you off. I'm sorry to do this to
13 you. Rather than we discussed, I would prefer I said, he
14 said.

15 A. Okay.

16 Q. Can you do that for me?

17 A. Sure.

18 Q. Thanks.

19 A. I had asked about the number of motions. He
20 initially I believe said six. I asked him how the other
21 motions to join and motions by other Defendants applied,
22 then JD came back with I believe 20 or 21 was the number
23 of motions. I asked him then how we would move on through
24 the various motions, and JD's response was finish up the
25 one we're working on then figure out if we have to move on

1 to the rest. And that was the end of the discussion about
2 the process.

3 Q. Did he say anything to you at any time during the
4 ride or during the day at all about the parties? He make
5 any comments about any of the Defendants?

6 A. I don't recall him making any, no.

7 Q. Any comments about the lawyers?

8 A. Not that I recall.

9 Q. You can tell me. I know he doesn't like me.

10 A. No. Other than in mentioning -- I believe he at some
11 point mentioned he spoke to Mr. Malarcik about the timing
12 of being back up here this afternoon. That was the only
13 specific mention that I recall.

14 Q. This is a tough one; did he say anything about the
15 judge?

16 A. Not that I recall.

17 MR. SCHAMEL: With the Court's
18 indulgence?

19 Q. (BY MR. SCHAMEL) Let me ask you a sort of funny
20 question about your feelings. Okay?

21 A. Okay.

22 Q. Think about yesterday about this time yesterday when
23 you left here how you were feeling about your role in this
24 case, your testimony, the case in its entirety. Okay?

25 A. Okay.

1 Q. Make the mental image of that. And then think about
2 how you felt about this case when you pulled up into the
3 parking garage here in Cuyahoga County. Okay?

4 A. Okay.

5 Q. Did you feel better about the case? Feel worse about
6 the case? No change?

7 A. When we arrived at the building?

8 Q. When you got back to the building. Spent a whole day
9 with JD May and been down there with the lobbyist and your
10 chain of command, testified and had these conversations,
11 how did that make you feel in relation to how you felt
12 yesterday about this case?

13 A. To be honest with you, sir, the only thing I felt for
14 the last 12 or 14 hours is exhausted. I've thought about
15 my testimony and the way that these proceedings have gone.
16 You know, like anybody does, I tried to figure out what I
17 may have done good, what I may have done wrong, but at the
18 end of the day the only thing I felt about this, quite
19 frankly, is exhausted with the process at the moment.

20 Q. And did you feel being asked to come down and testify
21 and doing all those things that it sort of gave you a
22 different perspective on this case, made you think about
23 it a little different?

24 A. I don't think so.

25 Q. Maybe you are fighting a good fight after all?

1 A. No. I felt we've been doing what we've been sent out
2 to do for a long time now. I viewed this morning as one
3 more piece of what we're already involved in.

4 Q. Which is what?

5 A. Well, the various investigations.

6 Q. You felt today testifying in the Senate was somehow a
7 piece of your investigation?

8 A. I felt it was part of the overall process, whether
9 it's an investigation or whether in this case it was being
10 asked to go down to the Senate Building.

11 Q. And by that do you mean part of the overall plan,
12 which was to shut down the sweepstakes?

13 MR. MEYER: Objection, Your
14 Honor.

15 THE COURT: Sustained.

16 MR. SCHAMEL: That's it, Your
17 Honor. Thank you. Nothing more at this time.
18 Sorry, with the Court's indulgence. I spoke too
19 quickly. I told you I was speaking for eight
20 lawyers here and I missed one.

21 THE COURT: Just one second.

22 MR. SCHAMEL: Mr. DeVan had a
23 couple questions he would like me to ask for him.

24 THE COURT: Unfortunately,
25 gentlemen, you know we made arrangements to pick

1 our children up. We may have to come back
2 tomorrow. We can only push the Court Reporter,
3 the staff attorney, and court employees involved
4 here as far as we can.

5 Q. (BY MR. SCHAMEL) Let me draw your attention to
6 Court's Exhibit 1, which is Page 2 of your statement. Two
7 e-mails, the notice, your statement, go to the second
8 page, the paragraph that starts with, The three basic
9 elements of gambling devices.

10 The three basic elements of gambling devices are
11 consideration, chance and reward.

12 A. Okay.

13 Q. This paragraph, are these your words?

14 MR. MEYER: Objection, Your
15 Honor.

16 THE COURT: Sustained as it
17 relates to this. We are going to -- Just as it
18 relates to the actual statement. You'll have the
19 opportunity to cross examine the agent at a later
20 time if we get to that issue, but as it relates to
21 only what happened with Mr. May, the car, I think
22 we're done at this point. Thank you.

23 Go ahead, Mr. Meyer.

24

25

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DIRECT EXAMINATION OF ROBERT BOLDIN

BY MR. MEYER:

Q. Sir, you and I have never met, have we?

A. No.

Q. I'm Matthew Meyer. I stepped in for Mr. May, and I want to ask you a few questions and wrap this up, if that would be all right.

A. Okay.

Q. When did you start testifying in this case?

A. This particular round?

Q. Yeah. When did you start?

A. Yesterday late morning.

Q. Somebody swear you in?

A. Yes, sir.

Q. And did you take the oath?

A. Yes, sir.

Q. And what did the oath require you to do?

A. Tell the truth, the whole truth, and nothing but the truth.

Q. Have you done that?

A. Yes, I have.

Q. As it relates to this underlying criminal case?

A. Yes, I have.

Q. And have you continued to do that in your questioning

1 today?

2 A. Yes, I have.

3 Q. And would it be fair to say there is some sharp
4 disagreement in Ohio about whether or not what these
5 Defendants are doing is gambling?

6 A. Yes, it would.

7 Q. Would it be fair to say a lot of money has been spent
8 on behalf of those Defendants in an effort to prove that
9 what they're doing is, in fact, legal?

10 MR. SCHAMEL: Objection. I'm not
11 sure where this is on our issue.

12 MR. MEYER: I'll tie it up,
13 Your Honor.

14 THE COURT: Overruled. You can
15 proceed now. Same rules apply, Mr. Meyer. Keep
16 it tight.

17 A. Yes, sir.

18 Q. (BY MR. MEYER) Have there been hearings that you've
19 been involved with separate and distinct from this legal
20 proceeding?

21 A. Yes.

22 Q. In other courtrooms?

23 A. Yes, sir.

24 Q. On the same subject matter?

25 A. Yes.

1 Q. Have you offered testimony in those courtrooms?

2 A. Yes, I have.

3 Q. Did you tell the truth in those courtrooms?

4 A. Yes, sir.

5 Q. And throughout that process have you been working
6 with any particular prosecutor or group of prosecutors?

7 A. Originally with Paul Soucie.

8 Q. Okay.

9 A. And for the past 10 months, 11 months, with
10 Prosecutor May.

11 Q. Okay. So during that time would it be fair to say
12 you've worked extensively with Mr. May?

13 A. Yes, sir.

14 Q. And before you started doing your current job what
15 did you do before that?

16 A. I've been a police officer for almost 20 years.
17 Prior to that I worked at a jewelry company. I worked
18 briefly as a welder.

19 Q. Focusing in on your time as a police officer, did you
20 have the opportunity to work with other prosecutors?

21 A. Yes.

22 Q. And did you have the opportunity to prepare for other
23 hearings and other cases?

24 A. Yes.

25 Q. And other testimony?

1 A. Yes, sir.

2 Q. And would you meet with those prosecutors?

3 A. Yes, sir.

4 Q. Was that routine?

5 A. Yes.

6 Q. Did you discuss your testimony before you testified?

7 A. In some manner we would certainly discuss the cases,
8 you know. I know we're always cautious --

9 Q. The prosecutors, just to cut right to it, talk to you
10 about what they anticipated you would testify to?

11 A. Yes.

12 Q. Was that routine process?

13 MR. SCHAMEL: Note the objection.

14 THE COURT: Fair enough. Your
15 objection is overruled.

16 Q. (BY MR. MEYER) Was that routine process?

17 A. Yes.

18 Q. You've testified in situations where you've been held
19 over a day?

20 A. Yes.

21 Q. Have you continued to work with those prosecutors
22 while you've been held over in testimony?

23 A. Yes, sir.

24 Q. And if those prosecutors had follow-up questions for
25 you during that process, did you answer them?

1 A. I don't recall the specific conversations. I'm sure
2 I probably would have answered those questions.

3 Q. Okay. At any point in this did Mr. May tell you to
4 testify as to something that wasn't true?

5 A. No, sir.

6 Q. Did he tell you to testify in a way that would help
7 powerful friends with let's say vested gambling interests?

8 A. No, sir.

9 Q. And did he suggest to you that your testimony in
10 front of the Legislature would help you in your testimony
11 in front of Judge Calabrese?

12 A. No, sir.

13 Q. So if I understand you correctly, nothing that's
14 happened in the last 24 hours has changed any of your
15 opinions or views or memory of what happened in this case?

16 A. No, sir.

17 Q. Do I have that about right?

18 A. Yes.

19 MR. MEYER: Nothing further.

20 THE COURT: Thank you.

21 Follow up?

22 - - - o0o - - -

23 RECROSS-EXAMINATION OF ROBERT BOLDIN

24 BY MR. SCHAMEL:

25 Q. At any time -- What we just heard, at any time in any

1 of those cases where your testimony was held over, did you
2 ever spend almost a full eight-hour day, five of them in
3 the car, with a prosecutor, that was the prosecutor
4 questioning you, to go someplace else and testify in
5 another matter rather than being in court?

6 A. No, sir.

7 MR. SCHAMEL: Thank you.

8 THE COURT: Thank you.

9 Anything else, Matt?

10 MR. MEYER: No.

11 THE COURT: We are going to
12 conclude this evening. Agent Boldin, I have to
13 advise you, of course, that you are still and
14 remain under oath and you are precluded from
15 speaking to anybody about your testimony in this
16 hearing as it relates to any of the other agents,
17 any of the other officers involved, as well as
18 Mr. May at this point. I know you will have
19 contact with the Prosecutor's Office, so let that
20 be Mr. Meyer or Mr. Soucie for now. All right.
21 That will be continued through and until we set
22 the next round of hearings as it relates to this
23 case. You are free to step down.

24 - - - o0o - - -

25 (Thereupon, the witness was excused.)

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1
2 THE COURT: As it relates to
3 the remainder of our schedule, we can set a
4 briefing schedule at this point. And so with that
5 being said, Mr. Malarcik, do you have any ideas as
6 it relates to your calendar, and, Mr. Meyer, any
7 ideas as it relates to your calendar, and
8 everybody else for that matter?

9 MR. MEYER: Thursday is a
10 problem for me.

11 THE COURT: This Thursday?

12 MR. MEYER: Yes.

13 THE COURT: I don't think I
14 need anything done that quickly because everybody
15 has to fly back.

16 MR. MEYER: I'll be leaving the
17 office on the 24th and will return the 3rd.

18 THE COURT: That's essentially
19 the same schedule as I have and I suspect
20 everybody else since we are just a few days away
21 from Christmas.

22 Let's do this then; let's say that your
23 Briefs on the issue of Mr. May and the remaining
24 issues that have come to light as of today will be
25 due --

1 MR. SCHAMEL: We're exactly two
2 weeks from Christmas today, Your Honor.

3 THE COURT: I know. The first
4 round of Briefs, January 7th of 2013. That gives
5 us all our holiday break and we can then move on
6 from there.

7 MR. MEYER: How do you envision
8 us doing this? Do you envision a written Motion
9 to Disqualify the Prosecutor and/or Dismiss the
10 Case, and the State responds?

11 THE COURT: I can anticipate
12 that will be the motion that will be filed at this
13 point.

14 So let's say that the State of Ohio begins
15 its preliminary preparation for that, and you have
16 January 22nd --

17 MR. MEYER: Very good.

18 THE COURT: -- for return for
19 Reply Brief. Then, Mr. Malarcik, you can have
20 until the 25th to have any Surreply on that. And
21 then we'll set a hearing the following week in the
22 event that we need one. And we'll move from
23 there. Okay?

24 MR. MALARCIK: Thank you, Your
25 Honor.

1 THE COURT: 25th for any
2 Surreply. Well, actually, let's make it the 28th.
3 I apologize. Make it the 28th. That will give
4 you the weekend to reply, and then I can review
5 all the information from there.

6 MR. MALARCIK: Thank you, Judge.

7 MR. MEYER: For the record,
8 I've been joined at counsel table by
9 Christian Schroeder.

10 THE COURT: There should be one
11 more admonition, and I need to bring Mr. May up.

12 MR. MEYER: I could advise him.

13 THE COURT: You can advise him,
14 Mr. Meyer, you're an Officer of the Court. The
15 admonition is Mr. May is not allowed to speak to
16 Agent Boldin at any point about this case. In
17 fact, I would suggest that they do not speak at
18 all at this point. And, Mr. Meyer, of course, you
19 are welcome to speak to Mr. May and the other
20 prosecutors as you are here as a representative of
21 the office and he is, in fact, a prosecutor
22 working on multiple files. However, as it relates
23 to Agent Boldin, my admonition remains no talking
24 about this case. Okay?

25 MR. MEYER: Very good, Your

1 Honor.

2 MR. PITINNI: Rick Pitinni on
3 behalf of Mr. Maggiore. I'm trusting you would
4 prefer one joint motion as opposed to 10,000
5 motions saying the same thing, much like we're
6 trying to do?

7 MR. MEYER: I would prefer it.

8 THE COURT: Absolutely. One
9 motion, and maybe all of you can choose who would
10 take the lead on that motion and it can be filed.
11 If I get 50 of them, it's going to make things
12 more difficult, more complicated, and more
13 expensive for everyone involved.

14 MR. PITINNI: That's why I wanted
15 to bring it up.

16 THE COURT: Absolutely. Thank
17 you.

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19 (Thereupon, proceedings were concluded.)

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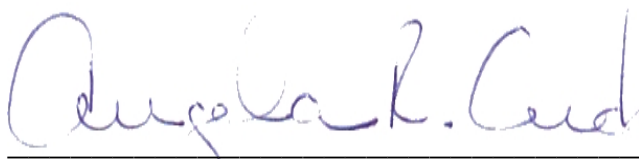
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C E R T I F I C A T E

I, Angela R. Cudo, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that I am employed as an Official Court Reporter, and I took down in stenotypy all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript is a complete record of the proceedings had in the said cause, and constitutes a true and correct Transcript of Proceedings had therein.



Angela R. Cudo, RPR
Official Court Reporter
Cuyahoga County, Ohio